

United States
Circuit Court of Appeals

For the Ninth Circuit.

WATERLOO REGISTER COMPANY, a corporation,
Appellant,

vs.

CHARLES ATHERTON,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern
District of California, Central Division.

Filed

DEC 12 1929

Paul P. O'Brien

Clerk

No.

United States
Circuit Court of Appeals
For the Ninth Circuit.

WATERLOO REGISTER COMPANY, a corporation,
Appellant,

vs.

CHARLES ATHERTON,

Appellee.

Transcript of Record.

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District of California, Central Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Appellant:

ALAN FRANKLIN, Esq.,

639 Cotton Exchange Building, Los Angeles,
California.

For Appellee:

SAMUEL E. FOUTS, Esq.,

825 Title Insurance Bldg., Los Angeles, Cali-
fornia.

United States of America, ss.

To CHARLES ATHERTON and to SAMUEL E. FOUTS, his attorney, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 16th day of October, A. D. 1929, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States in and for the Central District of California, in that certain suit in equity No. N-113-H, wherein Waterloo Register Company, a corporation, is the Plaintiff, and Charles Atherton is the Defendant, to show cause, if any there be, why the Judgment and Decree in the said Appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Edward J. Henning United States District Judge for the Southern District of California, this 17th day of September, A. D. 1929, and of the Independence of the United States, the one hundred and fifty-fourth

Edward J. Henning

U. S. District Judge for the Southern District of California.

[Endorsed]: N 113 H In the United States Circuit Court of Appeals for the Ninth Circuit Waterloo Register Company, a corporation, Plaintiff-Appellant, vs. Charles Atherton, Defendant-Appellee. Citation Service of the within citation and receipt of copy thereof admitted this 30th day of Sept., 1929. Samuel E. Fouts Attorney for Defendant. Filed Oct. 16, 1929. R. S. Zimmerman, Clerk, by M. L. Gaines, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

WATERLOO REGISTER COM-)	
PANY, a corporation,	)	In Equity
	)	No. N 113-H
Plaintiff,	)	BILL OF
	)	COMPLAINT
vs.	)	FOR INFRINGE-
	)	MENT OF U. S.
CHARLES ATHERTON, JOHN	)	LETTERS
DOE and RICHARD ROE,	)	PATENT No.
	)	1,601,469.
Defendants.)	

TO THE HONORABLE, The Judges of the District Court of the United States, In and For the Ninth Circuit, Southern District of California, Southern Division:

WATERLOO REGISTER COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Iowa, and having its principal office for the transaction of business in the City of Waterloo, County of Blackhawk and State of Iowa, and a branch office within the Southern Division of the Southern District of California, to-wit: at #822 Clanton Street, Los Angeles, California, brings this its bill of complaint against Charles Atherton, a resident and inhabitant of Los Angeles, County of Los Angeles and State of California, John Doe and Richard Roe, being within this Federal District, where the unlawful acts herein complained of have been and are being committed; and thereupon plaintiff shows unto your Honors:

I.

That the names of defendants, John Doe and Richard Roe, are fictitious for the reason that their true names are

at present unknown to plaintiff, but their true names will be substituted as soon as ascertained by plaintiff.

II.

That the jurisdiction of the Court depends upon the Patent Laws of the United States.

III.

That Letters Patent of the United States No. 1,601,469, dated September 28, 1926, were duly granted to William L. Carter for improvements in Air Register, under and in accordance with the provisions of the then existing Statutes of the United States and Rules of Practice of the United States Patent Office.

IV.

That said William L. Carter has, by an instrument in writing, duly signed and delivered and duly recorded in the United States Patent Office, assigned all his right, title and interest in and to said Letters Patent No. 1,601,469 to the plaintiff who now owns the same and all rights thereunder.

V.

That plaintiff is now the sole owner of said Letters Patent and all the rights thereunder, including the right to recover for past infringement.

VI.

That prior to the commencement of this suit the defendants have been notified in writing of the granting and issuance of said Letters Patent No. 1,601,469 and all the rights of plaintiff thereunder, and demand has been made upon defendants to respect said Letters Patent and not to infringe thereon, but notwithstanding such notices the defendants have continued to make, use and sell Air Registers and component and essential parts and features thereof, embodying the inventions of said Letters Patent.

VII.

And plaintiff further shows unto your Honors and alleges, that notwithstanding the premises, but well knowing the same, and without the license or consent of plaintiff, and in violation of said Letters Patent and plaintiff's rights thereunder, the defendants have, jointly and severally, infringed upon said Letters Patent, since the date of said Letters Patent, and prior to the filing of this bill, by making or causing to be made, using or causing to be used and selling or causing to be sold, air registers made in accordance with and embodying the invention set forth in each of the claims of said Letters Patent No. 1,601,469 wilfully and without the consent of the plaintiff, and are continuing so to do, and have derived unlawful gains and profits from such infringement, which plaintiff would otherwise have received, but for such infringement, and plaintiff has thereby been caused irreparable damage.

VIII.

That for all the wrongs herein complained of, plaintiff has no plain, speedy and adequate remedy at law, and is without remedy, save in a Court of Equity, where matters of this kind are properly cognizable and relievable.

To the end, therefore, that the defendants, and each thereof, may, if they can, show why plaintiff should not have the relief herein prayed, and may, according to the best and utmost of their knowledge, recollection and information and belief, but not under oath (an answer under oath being hereby expressly waived) full, true and perfect answer make, to all and singular, matters and things hereinabove charged, plaintiff prays for a writ of injunction, as well provisional as permanent, issuing out of and under the seal of this Court, enjoining and restraining

the said defendants, and each and every of them, their solicitors, clerks, servants, agents, attorneys and workmen, and each and every of them, from infringing upon said Letters Patent; that all air registers made, used or sold by defendants in infringement of plaintiff's said Letters Patent No. 1,601,469 be delivered up to and impounded by the United States Marshall, until further disposition thereof is made by the Court; that defendants account and pay to plaintiff for the profits made by them and each of them, and the damages sustained by the plaintiff, and that upon rendering a decree herein, the actual damages be trebled, in view of the wilful and unjust infringement by said defendants; that plaintiff recover the costs and disbursements of this suit; and plaintiff prays for such other and further relief as may appear proper and be agreeable to equity.

WATERLOO REGISTER COMPANY,

a corporation,

By Alan Franklin

Its Attorney.

[Endorsed]: No. N 113-H. United States District Court, Southern District of California, Southern Division. Waterloo Register Company, a corporation, plaintiff vs. Charles Atherton, John Doe and Richard Roe, defendants. Bill of Complaint. Filed Jun. 18, 1928. R. S. Zimmerman, Clerk, by Edmund L Smith, Deputy Clerk. Alan Franklin, Attorney-at-law 720-730 California Bldg. Los Angeles Metropolitan 4761.

IN THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

WATERLOO REGISTER COM-)	
PANY, a corporation,)	In Equity
Plaintiff,)	No. N 113-H
vs.)	FOR INFRINGE-
CHARLES ATHERTON, JOHN)	MENT OF U. S.
DOE and RICHARD ROE.)	LETTERS
)	PATENT No.
)	1,601,469
Defendants.)	

TO THE HONORABLE, The Judges of the District Court of the United States, In and For the Ninth Circuit, Southern District of California, Southern Division:

ANSWER OF DEFENDANT CHARLES
ATHERTON

I

As to the alleged corporate status and place of business of the plaintiff, the Waterloo Register Company, and its alleged incorporation under the laws of the State of Iowa, this defendant, Charles Atherton, has no knowledge or information, save from the bill of complaint, and leaves plaintiff to its proof thereof.

II

The defendant, Charles Atherton, admits that he is a resident and inhabitant of the City of Los Angeles, County of Los Angeles, and State of California, within the Southern Division of the Southern District of California, but denies that he has committed acts of infringement either at said place or in said District, or elsewhere.

III

This defendant, Charles Atherton, admits that if he has committed acts of infringement, the ground upon which this Court's jurisdiction depends in this case is that it is a suit in Equity arising under the Patent Laws of the United States; but he denies that he has committed acts of infringement.

IV

The defendant, Charles Atherton, admits on information and belief, that Letters Patent of the United States No. 1,601,469, were issued on or about the 28th day of September, 1926, for Air Registers, and that one William L. Carter of Waterloo, Iowa, was named therein as patentee; but the defendant denies that the said William L. Carter was the original, first and sole inventor of the alleged improvements in Air Registers set forth in said Letters Patent; and the said defendant further denies that the said Letters Patent were duly granted to the said William L. Carter under and in accordance with the provision of the then existing Statutes of the United States and Rules of Practice of the United States Patent Office.

V

The said defendant, Charles Atherton, does not know and is not informed, save by the bill of complaint, whether the said William L. Carter did, by an instrument in writing, which was duly signed, delivered and duly recorded in the United States Patent Office, assign all right, title and interest in and to said Letters Patent No. 1,601,469, to the plaintiff, or whether the said William L. Carter assigned any interest whatever in and to said Letters Patent to the plaintiff, and he therefore leaves plaintiff to its proof thereof.

VI

The defendant, Charles Atherton, does not know and is not informed, save by the bill of complaint, whether the plaintiff is now the sole owner of said Letters Patent and all the rights thereunder, including the right to recover for past infringement, and he therefore leaves plaintiff to its proof thereof.

VII

The defendant, Charles Atherton, admits that, prior to the commencement of this suit, he was notified in writing of the granting and issuance of said Letters Patent No. 1,601,469; but he denies that he ever made, used or sold Air Registers and component and essential parts and features thereof which embodied the inventions of said Letters Patent, or that he continued to make, use or sell such registers and parts since the receipt of such notice.

VIII

The defendant, Charles Atherton, specifically denies each and all of the allegations contained in paragraph VII of the bill of complaint, and he particularly denies the allegation that, because of his alleged infringement of the said Letters Patent No. 1,601,469, the plaintiff has been caused irreparable damage; but defendant avers that the plaintiff has sustained no damage whatever due to any infringing act of the said defendant.

IX

The defendant, Charles Atherton, avers, on information and belief, that said Letters Patent No. 1,601,469, were and are invalid and void because the alleged invention or discovery described and claimed therein and all material and substantial parts thereof had been, prior to the alleged invention or discovery thereof by the said William L.

Carter, or more than two years prior to his application for said Letters Patent, described and published in United States and Foreign Letters Patent now unknown to the defendant, but which, when known, defendant prays leave by proper amendment to insert in this answer.

X

The defendant avers, on information and belief, that said Letters Patent No. 1,601,469, are invalid and void because the alleged invention or discovery described and claimed therein and all material and substantial parts thereof had, prior to the alleged invention or discovery thereof by the said William L. Carter, or more than two years prior to his application for said Letters Patent, been published in various printed publications now unknown to this defendant, but which, when known, defendant prays leave by proper amendment to insert in his answer.

XI

The defendant, Charles Atherton, avers that, in view of the state of the art existing at the time of the alleged invention or discovery described and claimed in said Letters Patent No. 1,601,469, no invention was involved in the alleged improvement in Air Registers claimed and described in said Letters Patent, and therefore said Letters Patent are invalid and void.

XII

Further answering, the defendant, Charles Atherton, avers that said Letters Patent No. 1,601,469, and the claims thereof, are invalid and void because, prior to the alleged invention or discovery thereof by the said William L. Carter, or more than two years prior to the application for said Letters Patent, every material and substantial part of said alleged invention and improvement

was known to and had been publicly used by other persons or parties in the United States at the places designated, to wit:

Name	Located at	Place of Use
Charles Atherton,	5426 Santa Monica Blvd. Los Angeles, Calif.	13015 Chandler Blvd. Van Nuys, Calif. and elsewhere.
Emil R. Bossard,	13015 Chandler Blvd. Van Nuys, Calif.	"
Mrs. Elizabeth Bossard,	"	"
Herbert L. Lindsay,	961 South Fair Oaks St. Pasadena, Calif.	Pasadena, Calif. and elsewhere.
Edward L. Heany,	34 Harkness Street Pasadena, Calif.	Pasadena, Calif. and elsewhere.
John McCarty,	Union Labor Temple Los Angeles, Calif.	"

And that the said alleged invention or improvement was known to and used by other persons in the United States, whose names and residences and places of use defendant prays leave to add to this answer when he shall have ascertained the same.

XIII

Further answering, the defendant, Charles Atherton, avers that the claims of the William L. Carter patent in

suit are for mere aggregations and not for patentable combinations, and that the Letters Patent are, therefore, void.

XIV

The defendant, Charles Atherton, avers that, in the first half of the year 1923, he made, sold and installed air registers identical in every essential particular to those he has made, sold and installed since this suit was brought; that he has continued making, selling and installing said air registers since the year 1923; that many of said air registers which he made, sold and installed more than two years prior to the filing date of plaintiff's application upon which the patent in suit was granted are still in use in the places of installation in and about Los Angeles, California; that he has not changed the design or in any material respect modified the structure of his air register since 1923; that his said air register does not embody the specific structure defined in the claims of the patent in suit, and that, if it does embody said structure, then the said patent is void because the said structure has been in wide public use since the year 1923, which is more than two years prior to the filing date of the application of the patent in suit.

Charles Atherton

By Samuel E. Fouts

His Solicitor and Counsel

[Endorsed]: No. N-113-H. In the Southern Division of the United States District Court for the Southern District of California. Waterloo Register Co., plaintiff vs. Charles Atherton, et al. defendants. Answer to Bill of Complaint. Service of the within answer admitted this 24th day of July, A. D. 1928. Alan Franklin per R. R.

Filed Jul. 24, 1928 R. S. Zimmerman, Clerk, by Edmund L. Smith, Deputy Clerk. Samuel E. Fouts, Attorney at law 825 Title Insurance Bldg., Los Angeles, Calif. For defendant Charles Atherton.

IN THE UNITED STATES DISTRICT COURT

Waterloo Register Company,)
a corporation,)
)
Plaintiff,)
)
vs.,)
)
Charles Atherton, John Doe)
and Richard Doe.)
)
Defendants.)

In Equity No. N-113-H
ORDER

Upon presentment of the foregoing demand for a Bill of Particulars, or a further and better statement of the matters and things referred to in the answer to the Bill of Complaint of the defendant, Charles Atherton.

IT IS HEREBY ORDERED, That said demand be and it is hereby allowed, and said defendant ordered to furnish the same within ten days hereof unless some sufficient objection is seasonably made thereto.

Dated this 8 day of August, 1928.

Wm P. James

United States District Judge.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Waterloo Register Company,)	
a corporation,)	
)	
Plaintiff,	)	IN EQUITY
	)	No. N-113-H.
vs.	)	For Infringement of U.
	)	S. Letters Patent No.
Charles Atherton, John Doe	)	1,601,469
and Richard Roe.)	
)	
Defendants.)	

DEMAND FOR BILL OF PARTICULARS.

The Plaintiff, Waterloo Register Company, a corporation, hereby demands further and better particulars as to the several matters set forth in the answer of the defendant above named, Charles Atherton, based on the fact that the several matters set forth in said answer are so ambiguous, unintelligible, and uncertain as to make it imperative for the plaintiff to know exactly as to the case plaintiff is to meet at the trial of this cause, and in the following respects, to-wit:

Defendant Charles Atherton is required to furnish further and better particulars with respect to United States Letters Patent, No. 1,601,469, named in his said answer and particularly in paragraphs XI, XIII and XIV thereof.

XI.

Particulars set forth and distinctly state in what respects the device covered by said letters patent was not new, or involved no invention at the time of the patentee's alleged invention or discovery thereof, and in this regard state:

(a) Is it contended that the combination set forth in the several claims is not new?

(b) Or that certain elements of the invention disclosed in said letters patent are not new, specifying which elements?

(c) Specify particularly what data, whether documentary, oral or otherwise, will be relied upon to show the alleged invalidity of said letters patent.

XIII.

Particularly set forth and distinctly state in what respect the claims of the patent in suit are for mere aggregations and not for patentable combinations.

XIV.

Particularly set forth when and where the defendant made, sold and installed air registers, more than two years before the filing date of the patent in suit, which are identical in every essential particular to those which he has made, sold and installed since this *this* suit was brought, and which are still in use in the places of installation in and about Los Angeles, California, and in this regard state:

(a) The respective addresses of the places where such air registers were made and installed.

(b) The respective addresses of the places where such air registers were installed and are now still in use.

Alan Franklin

Solicitor and Counsel for Plaintiff.

[Endorsed]: No. N-113-H. United States District Court, Southern District of California, Division. Waterloo Register Company, a corporation, plaintiff, vs. Charles Atherton, et al, defendants. Demand for Bill of Particulars and Order. Received copy of with-

in Demand this 8th day of August, 1928. Samuel E. Fouts, attorney for Chas. Atherton. Filed Aug. 9, 1928. R. S. Zimmerman, Clerk, by L. J. Cordes, Deputy Clerk. Alan Franklin, attorney for plaintiff, 639 Cotton Exchange Bldg. Los Angeles, Calif. Tucker 2760

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Waterloo Register Company a))	
corporation,)	
)	
Plaintiff,	)	IN EQUITY
	)	No. N-113-H.
vs.	)	For Infringement of
	)	U. S. Letters Patent
Charles Atherton, John Doe and )	)	No. 1,601,469
Richard Roe.)	
)	
Defendants,)	

ANSWER OF DEFENDANT, CHARLES ATHER-
TON, TO PLAINTIFF'S DEMAND FOR BILL
OF PARTICULARS

Charles Atherton, the answering defendant, says with reference to plaintiff's Demand for Bill of Particulars:

1—As to the allegation concerning the Carter patent made in paragraph XI of the Answer to the Bill of Complaint, he will show that, more than two years prior to June 7, 1926, which was the filing date of the application upon which said patent issued, he had in his possession a register substantially the same as that claimed in the said letters patent, differing therefrom only in the details here-

inafter set forth. Said register is still in his possession and may be seen by plaintiff's counsel. That it was in his possession prior to June 7, 1924, will be shown by the testimony of Charles Atherton, Herbert L. Lindsay and John McCarty, whose addresses are given in paragraph XII of defendant's answer.

2—Answering specifically the questions propounded in paragraph XI of the Demand for Bill of Particulars, he, Charles Atherton, says:

(a) It is not contended that the combinations set forth in the several claims of the patent in suit are not new as to the minor details recited therein; but it is contended that these details are obvious and uninventive changes of the register referred to in paragraph 1 hereof, and that the said claims are impatentable thereover.

(b) None of the elements of the alleged invention set forth in the claims of said letters-patent is new, but the location of the "projecting ear" at one of the rear corners of the shutter is new. In the old register referred to in paragraph 1 hereof, the projecting ear is substantially in the center of the end of the shutter and not at the corner thereof. Further, the "shoulders engageable by said bar to limit the opening movement of the shutters" is new. The said old register has the shoulders and the bar, but the opening movement of the shutters is not limited by the engagement of the bar and shoulders, as claimed.

(c) Invalidity of the said letters-patent will be shown by the said old register and oral testimony concerning the same. Whether any documentary evidence respecting this register will be relied upon, defendant cannot now say. To the present time, no such documentary evidence has been discovered; but defendant hereby gives notice that

the same will be relied upon if discovered before the trial. To show that the minor details which have been referred to as new are obvious and therefore uninventive, defendant expects to rely upon the testimony of the witnesses named in paragraph XII of his answer and perhaps upon the testimony of patent experts.

3—In response to paragraph XIII of plaintiff's Demand for Bill of Particulars, defendant says:

Claim 1 calls for

(a) A rectangular frame, equi-distant rods secured thereto and extending across the opening therein, a series of shutters mounted on the respective rods,

(b) each shutter having one edge rolled about its rod to form a hinge connection, and the other edge offset to fit beneath the rolled edge of the next shutter so as to present a panel effect when the shutters are closed and to present the appearance of a fixed bar design when the shutters are open,

(c) one rear corner portion of each shutter being slit longitudinally and bent at right angles to form a projecting ear, a bar having series of projecting pins on which the ears are pivoted.

(d) the edges from which the ears are cut forming shoulders engageable by said bar to limit the opening movement of the shutters.

There is no cooperation between the specific structures of the elements of group (a) above, and the specific structures of the elements of either group (c) or (d); or between the specific structures of the elements of group (b) and the specific structures of the elements of group (c) or (d). In other words, it is entirely immaterial to the structure having the rods extending across the opening

of the frame whether the ears are in the corner of the shutters, as claimed, or in the middle of the shutters, as in the old register referred to in paragraph 2 above. Or, it is immaterial in a structure having the ears in the corner whether the rods extend across the opening in the frame or merely project slight distances, as in defendant's registers.

And it is immaterial to a structure having the features of groups (a) and (b) whether the edges from which the ears are cut engage with the bar to limit the movement of the shutters.

These are all separate and independent ideas and one may be omitted or modified without in any way affecting the other either structurally or functionally.

What has been said as to claim 1 applies equally to claim 2; wherefore, both claims are for aggregations of elements and not for patentable combinations of elements.

As to paragraph XIV, the only place now certainly known to defendant where an air register was sold and installed more than two years prior to the filing of the patent in suit and where said register is now still in use is at the home of Mr. Emil R. Bossard, No. 13015 Chandler Blvd., Van Nuys, California. But defendant says that a very large number of such registers were thus sold and installed at about the same time and he is convinced that, given time, he can locate some of them which are still in use. He, therefore, begs leave to furnish this information by proper amendment hereto when the same is obtained. The air register now in the Bossard home was made at 1164 E. Colorado Street, Pasadena, California.

Charles Atherton

By Samuel E. Fouts

Solicitor and Counsel

[Endorsed]: In Equity. No. N.-113-H. In the United States District Court in and for the Southern District of California Southern Division. Waterloo Register Company, a corporation, plaintiff, vs. Charles Atherton, John Doe and Richard Roe, defendant. Answer of defendant, Charles Atherton, to plaintiff's demand for bill of particulars. Received copy of the within Answer this 18th day of August, 1928. Alan Franklin, attorney for Waterloo Register Company, plaintiff. Filed Aug. 18, 1928. R. S. Zimmerman, Clerk, by L. J. Cordes Deputy Clerk. Filed by Samuel E. Fouts 825 Title Insurance Bldg. Solicitor and Counsel for Charles Atherton, defendant.

At a stated term, to wit: The January Term, A. D. 1929 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 24th day of June in the year of our Lord one thousand nine hundred and twenty-nine.

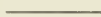
Present:

The Honorable Edward J. Henning, District Judge.

Waterloo Register Co., Plaintiff,)	
)	
vs.	)	No. N-113-H Eq.
)	
Charles Atherton, Defendant.)	

This cause having come before the Court for trial on May 10th, 1929, and thereafter having been ordered submitted on briefs to be filed, and briefs having been filed, and submitted to the Court for decision; upon considera-

tion whereof, the Court finds for the defendant to the effect that he has not infringed the claims of the patent in suit and for the reason that the registers made by the defendant were in public use for more than two years prior to the filing of the application for the patent in suit.



IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WATERLOO REGISTER COM-)
PANY,)

Plaintiff,)

vs.)

CHARLES ATHERTON, et al.,)

Defendants.)

IN EQUITY
NO. N-113-H.

FINAL DECREE

This cause came on to be heard at the January term of Court and was argued by counsel; and thereupon, upon consideration thereof, it is ORDERED, ADJUDGED AND DECREED by the Court, viz.:

1. That the Defendant, Charles Atherton, has not infringed the claims of the patent in suit and for the reason that the registers made by said Defendant were in public use for more than two years prior to the filing of the application for the patent in suit;

2. That Plaintiff take nothing by this suit; and

3. That the Bill of Complaint be, and the same hereby is, dismissed, with costs to Defendant in the sum of \$74.20 to be taxed according to the rules and practice of this Court, and that Defendant have execution therefor.

Dated this 5th day of September, A. D., 1929, at Los Angeles, California.

Edward J Henning
UNITED STATES DISTRICT JUDGE

Approved as to form:

Alan Franklin

Attorney for Plaintiff.

Filed and entered this.....day of September, 1929.

Decree entered and recorded, Sept. 5, 1929

R. S. Zimmerman, Clerk
By Frances E. Cross, Deputy Clerk

[Endorsed]: In Equity No. N-113-H In the United States District Court in and for the Southern District of California Central Division Waterloo Register Company, Plaintiff, vs. Charles Atherton, et al., Defendants. Final Decree Received Copy of the within Decree this 3rd day of Sept. 1929 Alan Franklin Attorney for Plaintiff Filed Sep 5 - 1929 R. S. Zimmerman, Clerk by Francis E. Cross, Deputy Clerk Samuel E. Fouts 825 Title Insurance Bldg. Los Angeles, California. Attorney for Defendants.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

HON. EDWARD J. HENNING, JUDGE PRESIDING.

WATERLOO REGISTER COM-)
PANY,)
Plaintiff,)
-v-)
CHARLES ATHERTON et al,)
Defendants.)

No. N-113-H
Equity.

REPORTER'S TRANSCRIPT OF TESTIMONY AND PROCEEDINGS ON TRIAL.

APPEARANCES:

For Plaintiff: Allan Franklin, Esq.

For Defendants: Samuel E. Fouts, Esq., for the Defendant Atherton.

LOS ANGELES, CALIFORNIA, FRIDAY, MAY 10, 1929. 10:45 A. M.

THE COURT: Are you gentlemen read to proceed in the matter of Waterloo Register Company vs. Atherton?

MR. FRANKLIN: Yes, your Honor.

THE COURT: The Court will take a ten-minute recess, and then proceed with that.

(Short recess.)

THE COURT: Proceed, gentlemen.

OPENING STATEMENT ON BEHALF
OF PLAINTIFF.

MR. FRANKLIN: If your Honor please, this is a suit for infringement of a United States letters patent issued to W. L. Carter on September 28, 1926, for an air register, patent No. 1,601,469. I can briefly state the nature of the invention, if the Court would like.

THE COURT: What is the issue? Is it one of novelty? Well, I see you are asking for an injunction.

MR. FRANKLIN: I represent the plaintiff. We bring suit for infringement of the patent, for an injunction and an accounting. The defendant sets up the usual defenses of anticipation by prior patents, prior publication and prior use, and aggregation of claims, and I think that covers the defenses.

THE COURT: That probably will be enough, I mean if he establishes those.

MR. FRANKLIN: Yes, it will be quite enough. Any one of them would be enough. The patent is an air register.

THE COURT: Yes, I noticed it. I used to work with one when I lived in Wisconsin.

MR. FRANKLIN: It might be well to read the opening paragraph of the patent so that your Honor will understand what it is about.

THE COURT: Yes.

MR. FRANKLIN: "The general object of the invention is to provide a register in which the shutters, when open, will have the same appearance as a fixed bar design or grating, permitting the free passage of a maximum current of hot air there through, and will, when closed, present an attractive panel effect with a polished surface, which may easily be kept clean and sanitary. In the preferred form of the invention, the frame containing the shutters is removably secured in an outside frame, which is secured at the outlet of the stack or flue, between abutting ends of the baseboard."

I will read just one claim: "In an air register, the combination of a rectangular frame, equi-distant rods secured thereto and extending across the opening therein, a series of shutters mounted on the respective rods, each shutter having one edge rolled about its rod to form a hinge connection therewith, and the other edge offset to fit beneath the rolled edge of the next shutter so as to present a panel effect when the shutters are closed and present the appearance of a fixed bar design when the shutters are open, one rear corner portion of each shutter being slit longitudinally and bent at right angles to form a projecting ear, a bar having series of projecting pins on which the ears are pivoted, the edges from which the ears are cut forming shoulders engageable by said bar to limit the opening movement of the shutters."

MR. FOUTS: If your Honor please, I would like to ask counsel a question at this point. You have read or called attention to Claim 1 only. Are you standing on

both claims of the patent? Let's have an understanding about that.

MR. FRANKLIN: We will stand on both claims for the present. I just read that first claim because it is shorter, and if you understand the first it will be very easy to understand the second.

THE COURT: Yes. And the defense, I take it, is pure white innocence?

MR. FOUTS: Yes. In the sense if you mean that we do not infringe the patent, we are innocent. And we have further defenses, that, whether we have made, used and sold the thing which is covered by the patent or not, we had a right to do it because the patent is not valid.

THE COURT: About how long will it take to try this?

MR. FRANKLIN: I am quite sure we can finish it today. Don't you think so?

MR. FOUTS: Well, that is very difficult to tell.

THE COURT: I wanted to get an approximate idea.

MR. FOUTS: Counsel and I talked it over the other day and we thought it was a day's job. If we had gotten started the first thing in the morning, I think probably we could, but I am doubtful if we can get through today. I think probably we will have to run over until Tuesday, if that is the next trial day.

THE COURT: Unless you want to work tomorrow morning.

MR. FRANKLIN: That is agreeable to me.

THE COURT: But we can see how we get along. You may be able to stipulate a lot of things.

(Testimony of J. G. Gilley.)

MR. FRANKLIN: I have the original Articles of Incorporation and papers showing that the plaintiff is a corporation duly organized under the laws of the State of Iowa. I have also a certified copy of all the papers, which are exemplified by the Governor of the State of Iowa, and I think by stipulation we may introduce the certified copy to prove the—

THE COURT: Is your corporate existence denied?

MR. FRANKLIN: It is denied in the answer.

MR. FOUTS: We just said we were without knowledge about it, and left the plaintiff to its proof. We consent and stipulate that it is all right.

THE COURT: All right, it may be received.

(Plaintiff's Exhibit No. 1.)

MR. FRANKLIN: I will offer in evidence the original patent in suit of the plaintiff.

THE COURT: It may be received.

(Plaintiff's Exhibit 2.)

MR. FRANKLIN: I will offer in evidence an assignment of the entire right, title and interest in the letters patent which was issued to William L. Carter, assigned to the Waterloo Register Company, a corporation, the plaintiff in this case.

THE COURT: It may be received.

(Plaintiff's Exhibit No. 3.)

J. G. GILLEY,

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

THE COURT: What is your name?

THE WITNESS: J. G. Gilley.

(Testimony of J. G. Gilley.)

DIRECT EXAMINATION

BY MR. FRANKLIN:

Before proceeding with the testimony of the witness, I will offer in evidence two letters, notifying the defendant of infringement of the patent. One letter is dated January 31, 1928, and I think counsel will stipulate that they received these letters. And the second letter is dated May 23, 1928.

THE COURT: They may be received.

(Plaintiff's Exhibits 4 and 5.)

Q BY MR. FRANKLIN: Are you employed by the plaintiff, the Waterloo Register Company, Mr. Gilley?

A Yes, sir.

Q And what is your position?

A Manager of the local branch at the present time.

Q In Los Angeles?

A Yes, sir.

Q How long have you been employed by the Company?

A This last time fourteen years.

Q Is the patentee of the patent in suit, W. L. Carter, connected with the plaintiff, the Waterloo Register Company, at the present time?

A Yes, sir.

Q What connection has he with the Company at the present time?

A He is Vice-President and Superintendent.

MR. FOUTS: If the Court please, I think we ought at this time to have an understanding about the record which the Reporter is making and what he is to make and how he is to be compensated for it. We haven't talked

(Testimony of J. G. Gilley.)

about that. It hadn't occurred to me to do so. I see he is reporting it. And I wish to say for Mr. Atherton that he is a man without means, and I want to conduct the case so as to do full justice to him and yet with all the economy that is possible. Mr. Atherton is willing to meet half of the expenses of making a copy of the court's record, and I think we ought to stipulate that that should be chargeable as costs in the case. If Mr. Atherton is successful in his case the entire cost of the Court's copy of the record ought to be borne by the losing party. We do not believe that Mr. Atherton will be able to take and pay for his own copy of this case, and, if the plaintiff wants a copy, let it pay for it. Mr. Atherton is willing to go that far, to meet half of the expenses of the Court's copy, and that is as far as he feels he can go, if that is agreeable.

THE COURT: Of course, it is not absolutely necessary to have a transcript, not knocking the business of the Reporter. Of course there should be for future purposes, particularly if you are going beyond this Court.

MR. FOUTS: Yes. In case of an appeal it is almost essential.

THE COURT: Yes; you would have to have one.

MR. FRANKLIN: Of course, the plaintiff desires a copy of the record, and we will pay one-half of the cost of the Court's record.

THE COURT: All right.

MR. FRANKLIN: And if Mr. Atherton is not able to pay for his record, I will be glad to loan you my copy.

MR. FOUTS: That surely is very kind of you. I didn't expect that.

(Testimony of J. G. Gilley.)

THE COURT: Ultimately the cost will be taxed against the loser.

MR. FOUTS: Yes.

MR. FRANKLIN: That is satisfactory.

Q Is the Waterloo Register Company, the plaintiff, now the owner of the patent in suit?

A They are.

Q I will hand you a device and ask you if you can state what it is.

A That is a louver or shutter type for a warm air register manufactured by the Waterloo Register Company.

Q Do you understand the operation of this register?

A I rather think so.

Q Have you read the patent in suit?

A Yes, sir.

Q Is this register constructed in accordance with the patent in suit?

A Yes, sir.

MR. FRANKLIN: I will offer this register in evidence as a register manufactured by the plaintiff.

THE COURT: It may be received.

(Plaintiff's Exhibit 6.)

THE COURT: Is there any objection?

MR. FOUTS: I don't know yet. I haven't looked at it.

THE COURT: He identified it as one built by the plaintiff.

MR. FOUTS: No objection.

THE COURT: It will be received.

Q BY MR. FRANKLIN: I will hand you another device and ask you to state what that is.

(Testimony of J. G. Gilley.)

A That is a louver or a shutter manufactured for a warm air register.

Q Have you seen it before?

A Yes, sir.

Q Where?

A I bought it yesterday.

Q Where did you buy it?

A From the Unit Furnace & Manufacturing Company.

Q I will hand you a paper and ask you to state what that is.

A That is my receipt for my purchase.

Q Is that the sales receipt for the purchase of that register?

A Yes, sir.

Q When you purchased this register what did you ask for?

A I asked for a louver manufactured by Atherton.

Q By Atherton, the defendant?

A Yes, sir.

Q And what did they tell you at the store?

A They got me what I asked for.

Q And they sold you this register as a register manufactured by the defendant, Mr. Charles Atherton?

A Yes, sir.

MR. FRANKLIN: I will offer this register in evidence.

MR. FOUTS: That is all right.

THE COURT: Is there any objection?

MR. FOUTS: No objection.

THE COURT: It will be received.

(Plaintiff's Exhibit 7.)

(Testimony of J. G. Gilley.)

MR. FRANKLIN: And I will offer in evidence the sales receipt.

THE COURT: It may be received.

(Plaintiff's Exhibit 8.)

Q BY MR. FRANKLIN: Could you tell approximately how long the plaintiff has been in the business of manufacturing registers in accordance with the patent in suit?

A This register?

Q The register which is the subject-matter of the patent.

A From in the fall of 1924.

MR. FOUTS: I didn't catch that. Will you read the questions and answers there, please?

THE COURT: I think if counsel will stay further back and speak in a louder tone of voice, the witness will answer in a louder tone. When counsel approaches the witness the tendency is to speak in a low voice. Read the questions and answers, Mr. Reporter.

(Record read.)

Q BY MR. FRANKLIN: Could you tell approximately the extent of the business of the plaintiff in manufacturing this device?

A Of a certain year?

Q No; the business since they have been manufacturing the device, to give the Court an idea of the extent, that is, some extent, of what the business is.

A Probably in the neighborhood of \$200,000 a year.

Q \$200,000 worth of business?

A Yes; I would imagine so.

(Testimony of J. G. Gilley.)

THE COURT: Of this device covered by this patent?

A Yes, sir.

Q BY MR. FRANKLIN: Has the plaintiff advertised this device to any extent?

A Yes, sir.

MR. FRANKLIN: I think that will be the plaintiff's case, and we rest.

THE COURT: Is there cross-examination?

MR. FOUTS: I want to cross-examine the witness, first.

THE COURT: You have your notice that the plaintiff will rest when you are through cross-examining.

MR. FOUTS: There may be some redirect at that time.

CROSS EXAMINATION

BY MR. FOUTS:

Q You say you are employed by the Waterloo Register Company, which is the plaintiff in this suit?

A Yes, sir.

Q And you state it to be your opinion that this Exhibit 6 is a register which is a product of the plaintiff company, the Waterloo Company?

THE COURT: That wasn't his testimony. His testimony was that he went to a shop to buy and called for that.

MR. FOUTS: That is the other exhibit, if your Honor please. This is the Waterloo register.

THE COURT: Oh, yes, I see. Pardon me.

Q BY MR. FOUTS: And you say that is made in accordance with the patent in suit?

A Yes, sir.

(Testimony of J. G. Gilley.)

Q Now let us look at that patent in suit. You say you are familiar with the patent in suit?

A Yes, sir.

Q Did you notice in Claim 1, for example, and also in Claim 2, that this inventor Carter, or alleged inventor, calls for equi-distant rods secured to the rectangular frame and extending across the opening therein, a series of shutters mounted on the respective rods, and so on? I want you to look at this exhibit and point out where are those equi-distant rods which extend across the opening in that outside frame.

A Around the outside here.

Q Where are the equi-distant rods which extend across the opening in the outside frame?

A Here is the rod that does it, that that refers to. It has the appearance of a rod.

Q But the claim calls for something besides a mere appearance. Where are the rods?

THE COURT: That is the answer.

Q BY MR. FOUTS: Let me ask you this, then—or I will go ahead with that claim in the next step: “A series of shutters mounted on the respective rods, each shutter having one edge rolled about its rod to form a hinge connection therewith.”

A Yes, sir.

Q Now, then, where are the shutters in this exhibit?

A Right here.

Q These things that swing about when I operate it?

A Yes.

Q They turn about a pivot, don't they?

A Yes, sir.

(Testimony of J. G. Gilley.)

Q What is the nature of that pivot?

A It is a rivet.

Q Then it is not a rod that extends clear across, is it?

A No, sir.

Q Then it is not made in accordance with the patent?

THE COURT: That is argumentative and we can't have that come from the witness.

MR. FOUTS: Yes, that is true. And the same is true as to Claim 2.

Q As I understand you, you say they are mere rivets, that is, at each end of these shutters there is a rivet or a pivot which projects in a short distance only, and the shutters are rolled about those rivets?

A Yes, sir.

Q Where did you say you got this other exhibit, Exhibit 8?

A From the Unit Furnace & Manufacturing Company.

Q And they merely told you that that is a register of Mr. Atherton's manufacture?

A Yes, sir.

Q You haven't any personal knowledge about that?

A No, sir.

MR. FOUTS: I think that is all, your Honor.

REDIRECT EXAMINATION

BY MR. FRANKLIN:

Q What is the purpose of the rods called for in the claim of the patent?

A To hold the louvers or wings in place. We call them wings in our factory, those little inch pieces.

Q Do you mean the shutters?

A Yes, sir.

(Testimony of J. G. Gilley.)

Q Do they form the pivot of the shutters?

A Yes, sir.

MR. FOUTS: That is a leading question, if I may interrupt.

Q BY MR. FRANKLIN: You say they hold the shutters?

A At the top and bottom, yes.

Q Does anything else hold the shutters in the frames?

A The loop or circle that is formed go around those pins.

Q And what is the purpose of the shutters being secured or mounted on those rivets or rods as specified in the patent?

A For an opening and closing device.

Q For hinging?

A Yes, sir.

Q You say the rods are for the purpose of hinging the shutters?

A Yes, sir.

Q The rods as specified in the patent?

A Yes, sir.

Q Counsel for the defendant has called your attention to the fact that in the device manufactured by your Company it has rivets at each end of the shutter, which I cannot very well see in the model, but I would ask you what is the purpose of those rivets.

A To form part of the hinge.

Q Do those rivets in the device manufactured by you perform the same function or a different function from the rods as specified in the patent?

A The same thing.

(Testimony of Frank Ohrmund.)

Q The same function?

A Yes, sir.

Q You were asked if you had any other knowledge that the defendant was manufacturing registers except from the knowledge that you received where you purchased a device which was sold to you as one of the defendant's. I will ask you if you can remember or have you any other knowledge of such devices being manufactured by the defendant.

MR. FOUTS: If your Honor please, we object to that as improper redirect examination and as asking for original evidence here.

THE COURT: Of course, that is true, and unless counsel has some explanation the objection would be good. Did you overlook it in your direct examination?

MR. FRANKLIN: I think I can place another witness on the stand as to that.

THE COURT: All right.

MR. FRANKLIN: That will be all, Mr. Gilley.

THE COURT: The prior notice of resting has been withdrawn, has it?

MR. FRANKLIN: Yes.

THE COURT: You want to call another witness, do you?

MR. FRANKLIN: Yes, if your Honor please.

FRANK OHRMUND,

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

THE COURT: What is your name?

THE WITNESS: Frank Ohrmund.

(Testimony of Frank Ohrmund.)

DIRECT EXAMINATION

BY MR. FRANKLIN:

Q Are you familiar with the registers manufactured by the Waterloo Register Company?

A Yes, sir.

Q I will hand you a register here, which is marked Plaintiff's Exhibit 6, and ask you if you can state whether that is a register manufactured by the plaintiff or not.

A It is.

Q Are you familiar with or do you know whether or not the defendant, Mr. Charles Atherton, manufactures registers?

A I do.

Q I will hand you a register, which is marked Plaintiff's Exhibit 7, and ask you if you can state who manufactures that register.

A Mr. Charles Atherton, I believe, manufactured this one.

Q What business are you engaged in?

A Heating.

Q Does your business have anything to do with the sale of registers of this character?

A We buy a lot of them, yes, sir.

Q Have you ever bought any from Mr. Atherton?

A Yes, we have.

Q Have you bought any like this Exhibit 7?

A Yes.

MR. FRANKLIN: That is all.

CROSS EXAMINATION

BY MR. FOUTS:

Q What is there about this Exhibit 7 which enables you to identify that as a register of Mr. Atherton's manufacture?

(Testimony of Frank Ohrmund.)

A Well, he rolled this here outside edge over here to hold the—I believe there are nails in there, and they hold the nail heads in there from coming out. This little rolled edge is double-seamed. It is just stiffening the nails so the louvers don't shake.

Q That is the reason you say it is Mr. Atherton's manufacture, is it?

A I can distinguish the two because there is quite a difference between the two of them.

Q That may be. But that is the only reason why you say this is an Atherton register, is it?

A I know because I have bought both of them. I know the different types.

Q You speak about some nails. What is the function of those nails in this assembly?

A They form a pivot entering into the little rolled edge of the louver, which enables the louver to slide back and forth, forming a sort of an axis for the louver itself.

Q And that is the way Mr. Atherton makes his registers, then, is it?

A Yes, sir.

Q Did you ever know of him to make up an assemblage of this kind where he had rods running all the way across through there?

A I have never seen any.

MR. FOUTS: That is all.

MR. FRANKLIN: I think we will rest.

THE COURT: The plaintiff rests.

PLAINTIFF RESTS.

DEFENSE

MR. FOUTS: If the Court please, before putting on a witness I would like to state the defendant's position here, please.

THE COURT: Yes.

OPENING STATEMENT ON BEHALF OF DEFENDANT, CHARLES ATHERTON.

MR. FOUTS: The defense is based principally upon the ground that the patent in suit is either limited by the terms of its claims to such a degree that the defendant does not infringe the claims or else the patent itself is invalid, that is, if the patent is to be construed so broadly as to cover the registers which the defendant has made and is making, then that patent is stretched too widely. It tears and it destroys itself and becomes invalid, and it is not capable of such a broad interpretation. One of the reasons why I say that is that that has been brought out in the examination of the witnesses, that the claims specifically call for these rods extending across the opening in the main outside frame, and for the shutters which are rolled about those rods. Mr. Atherton will prove that he never made a register in that way. And both of the claims of the patent are so limited.

There are other features of the claims of this patent which have not been brought out at all, and they constitute an interesting feature of it. If your Honor will take this exhibit I think I can make plain very quickly what I am driving at. If you will work those shutters, rocking them by that lever which projects out there in front and

getting the shutters open as you now have them, you will notice that connecting bar here at the rear.

THE COURT: I notice it.

MR. FOUTS: On the back side, I mean, which is pivoted to all of those various shutters. It is pivoted to ears which are struck from the ends of the shutters, and in striking those ears from the ends of the shutters there are shoulders formed which, theoretically, form limiting stops so that in swinging the shutters widely open those shoulders engage that connecting bar and you cannot swing the shutters beyond the limit which is allowed by those shoulders. Have I made that plain to your Honor?

THE COURT: Yes.

MR. FOUTS: It will be the contention of the defendant in this case that he never made a structure of that kind; that the shoulders which are formed by stamping out these lugs on his shutters are not depended upon at all as the limiting stop, and therefore the claims are not infringed because in each of them it specifically is provided that these shoulders are *engagable* by said bar to limit the opening movement of the shutters. We will show that Mr. Atherton always contended that the end of that bar abutting against the register frame is the thing which limits the movement of that shutter in its opening position, and not any engagement of any shoulders with the bar. So much for our defense on the ground of non-infringement.

We will prove to your Honor that more than two years before Mr. Carter ever filed his application for this patent, and you will notice that the application was filed on June 7, 1926, and two years before that would be June 7, 1924,

and long, long prior to June 7, 1924, Mr. Atherton had made this invention or had produced exactly this same thing which they have produced here as his manufacture, and the same thing which he has continued to make, use and sell up to this blessed day, that is, he started in business back in 1923, and he has been in business ever since. In 1926 this man Carter applied for a patent for the same thing except for those rods which run clear across that opening, and he got his patent, and he comes in and tells Mr. Atherton he shall not continue to do that which he has been doing some years before Carter ever heard or considered or thought of this invention. That is something I think the Court will not stand for, a man coming in years later and trying to stop a man who has been in the field long before him with what is said to be the same invention, which it is not, as we have pointed out. We will prove that Mr. Atherton not only made that invention away back there in 1923, but that he installed it in houses here in Los Angeles and elsewhere at that time. We will produce the owner of a house where one of these registers was installed in 1923, and we will produce the register which was installed there in 1923, and which was taken out of that house for the purpose of this trial, and to show the Court what it was that Mr. Atherton did away back yonder before Mr. Carter ever got into this field so far as we know, and the same thing that Mr. Atherton is doing up to the present time.

In view of those facts only one of two things is possible. Either this patent must be limited to features which Mr. Atherton was not using back at that time, or the patent

(Testimony of Charles Atherton.)

falls, one or the other. And if it falls, Mr. Atherton goes free, and if it is limited Mr. Atherton goes free.

That is our case, if your Honor please. If you wish me to call a witness before the noon hour, I will ask Mr. Atherton to take the witness-stand.

THE COURT: Yes; proceed.

CHARLES ATHERTON,

the defendant, called in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FOUTS:

I am going to make this as short and snappy as we can, if the Court please, to try to get through today.

THE COURT: Start out by getting the name in the record.

Q BY MR. FOUTS: What is your name?

A Charles Atherton.

Q Are you the Charles Atherton who is one of the defendants in this suit?

A I am.

THE COURT: May I interrupt you to ask were there any other defendants served?

MR. FOUTS: No, your Honor.

THE COURT: You are proceeding only against this man?

MR. FRANKLIN: Yes.

THE COURT: There were some Does and Roes and one thing and another. They were never served, were they?

MR. FRANKLIN: They were never served.

(Testimony of Charles Atherton.)

MR. FOUTS: And I have made no appearance for anybody except Mr. Atherton.

Q Where is your present place of business?

A At 1074 North Oxford, Hollywood.

Q What is the nature of your business?

A Manufacturing louvers or valves for registers.

Q Those are two different things, aren't they?

A No.

Q What? Louvers and valves for registers?

A Louver or valve, either one.

Q By that term "louver" you mean the same thing as has been referred to as shutters, don't you?

A Yes.

Q You make those things?

A Yes, sir.

Q You make up the entire assemblage, do you not, Mr. Atherton? I mean the outside frame and the pivots and things of that kind.

A Yes.

Q It has been testified here that this device, Plaintiff's Exhibit 7, is a register, or, as you call it, a louver, of your manufacture.

THE COURT: How do you spell that louver?

MR. FOUTS: L-o-u-v-r-e, I think.

A L-o-u-v-e-r.

MR. FOUTS: Well, I am not sure about it.

A That is my manufacture.

Q You did make this thing?

A Yes, sir.

THE COURT: The answer was you made this device Exhibit 7?

(Testimony of Charles Atherton.)

A Yes, sir.

Q BY MR. FOUTS: Are you making registers like it now?

A Yes, sir.

Q When did you first make a register like or similar to this exhibit?

A At the beginning of the year 1923.

Q Where were you then located, and what was your business at that time?

A Sheet metal heating and general jobbing.

Q Where?

A At 1164 East Colorado Street, Pasadena.

Q During approximately what period of time were you located at that particular place on Colorado Street?

A About five years.

Q Beginning when?

A About 1923 to July 28, 1925.

Q You were there before 1923 if you stayed there five years and left in 1925. When did you go there?

A It was approximately about that time.

Q All right. Who, if anyone, was associated with you then while you were in this particular location?

THE COURT: Do you mean the Pasadena location?

MR. FOUTS: Yes, sir.

A Who was what?

Q Who was associated with you in this business?

A Nobody.

Q After you left this particular place where did you go with your business?

A I moved to 961 South Fair Oaks.

Q And where is that?

(Testimony of Charles Atherton.)

A In Pasadena.

Q And was anybody associated with you at that time?

A Yes, sir.

Q And who was that?

A Mr. Herbert Lindsay.

Q When did you go there, did you say?

A I moved there about 1925.

Q You say that you made a register like or similar to this one which is an exhibit here—

THE COURT: Exhibit 7.

Q BY MR. FOUTS: Exhibit 7. —in 1923? Is that what you said?

A Yes, sir.

Q Where is that register now, if you know?

A I have it in the courtroom.

Q Will you produce it?

A Yes, sir.

Q You have produced what appears to be a register or louver. And am I correct in understanding that this is the identical louver that you made in 1923?

A Yes, sir.

MR. FOUTS: I ask that this be introduced in evidence as a defendant's exhibit.

THE COURT: Exhibit it to counsel. It may be received.

(Defendant's Exhibit A.)

Q BY MR. FOUTS: Mr. Atherton, where has this register been since it was made until it was brought up to this court?

A In my warehouse; in different warehouses.

Q In the custody of whom?

(Testimony of Charles Atherton.)

A Of myself.

Q All the time?

A Yes, sir.

Q Please tell us how you are so positive that that is the very first register you made.

A Well, I made it out of copper. It was easy, to start with. I made it out of scrap copper, and it was oversized, and I never could use it. The louvers were too long for a 12-inch opening.

Q So you identify it in those ways?

A Yes, sir.

Q And in addition to that you have had it in your custody?

A Yes, sir.

Q Was that the first register you had ever seen that had a similar structure?

A Yes, sir.

Q Had you not before that time seen some other structure which put you in the mind or the notion to make this?

A Yes, sir.

Q Now, what is that? That is what I am getting at.

A That was a guard off of a 1919 Hudson automobile.

THE COURT: A guard, did you say?

A Yes.

BY MR. FOUTS: Do you have that device, whatever it is, that you refer to as belong to the Hudson automobile?

A Yes, sir.

Q Have you that here?

(Testimony of Charles Atherton.)

A Yes, sir.

Q Will you produce it, please?

A Yes, sir.

THE COURT: You call that a guard. Why is it a guard?

Q BY MR. FOUTS: Will you explain to the Court just how this thing was intended to work in the Hudson automobile?

A It had rods—

THE COURT: That isn't what I mean. Where was it put? In the back or front or middle?

A In front of the radiator for heating and ventilating.

THE COURT: Yes, I see. I have a Hudson that has something like that on it. I think they call it the ventilator on the Hudson.

A Yes; it is for heating and ventilating.

MR. FOUTS: I would ask to have this introduced as an exhibit in the case, your Honor.

THE COURT: His identification might be established a little better. Did you get that off of a car?

A It was taken off of a car. I repaired automobile radiators at the time, and this was thrown out of an auto shop.

THE COURT: When was that?

A That was in the beginning of 1923.

THE COURT: You say it was a 1919 car?

A A 1919 car.

THE COURT: Or did I misunderstand you?

A It was a 1919 Hudson.

THE COURT: And it was in 1923 you took it off?

(Testimony of Charles Atherton.)

A The garage men took it off. The car was insured, and the honeycomb in it or the radiator was busted and they threw the whole thing away and I took it.

MR. FOUTS: Is that sufficient identification now, your Honor?

THE COURT: Yes.

MR. FOUTS: I should like to have this introduced in evidence as Defendant's Exhibit B.

THE COURT: It may be received.

(Defendants' Exhibit B.)

MR. FRANKLIN: That I suppose is introduced in evidence for the purpose of showing the prior state of the art.

THE COURT: I assume so.

MR. FRANKLIN: And not for the purpose of establishing the invalidity of the patent, because it was not so stated in answer to the bill of particulars.

MR. FOUTS: That is correct.

THE COURT: It will be received. Do you happen to know, is that a patented device that the Hudson uses?

MR. FOUTS: I don't know, your Honor, whether it is or not. We looked to see whether there was any nameplate on it, and there is none, and I don't know. I daresay it is, but I don't know.

Q Look at this Defendant's Exhibit B and operate the louvers. When they are in their fully opened position what is the appearance of the edges of the louvers across the opening there?

A A fixed bar design.

Q Close the louvers now and what is the appearance of the device?

(Testimony of Charles Atherton.)

A A square panel effect.

Q Look at the pivots of those various louvers and state just what is the nature of the pivots.

A These nails were put in by me or these pivots.

Q You mean that the device has been changed since you took it off of the automobile?

A Yes. It had rods extending in these beads and it is rolled around the edge, and I took the rods out because it wasn't necessary for me to have them in. But in an automobile I suppose they had to have them in on account of making it stiff, but I didn't need it.

Q And what have you got in there now?

A Nothing. I drove the rods out, or pulled them out.

Q But there is something else in there to take the place of the rods to form pivots, isn't there?

MR. FRANKLIN: That is objected to as leading.

A Yes. I put in my nails for pivots.

Q BY MR. FOUTS: What became of those rods that you say you took out?

A I have them here.

Q Where are they?

A Right here; that is, a part of them anyway.

Q They should be tied together in some way or other. What do you say these rods are that you have just handed me?

A They are rods that were in each of the shutters extending across the opening of the register.

THE COURT: Of Defendant's Exhibit B?

MR. FOUTS: Yes, your Honor. I would like to have these introduced in evidence as an exhibit.

THE COURT: They may be received.

(Testimony of Charles Atherton.)

(Defendant's Exhibit C.)

Q BY MR. FOUTS: After you had gotten this old Hudson register, Defendant's Exhibit B, in what way, if at all, did you use it in the matter of designing a register for heating purposes?

A I put it together in the shape it is now and made one out of copper, about what I wanted, and I never changed it.

THE COURT: By one out of copper do you mean Defendant's Exhibit A?

A Yes.

Q BY MR. FOUTS: Where has this Hudson register with these rods been since you took them out of the automobile?

A In my warehouse with the other registers. I carried a lot of registers.

Q In whose custody?

A In mine.

Q Going back a moment to Defendant's Exhibit A, point out any differences, if there are any, in the mechanical structure and the principles of operation of that register and the registers which you are today manufacturing.

A There is none, only this is made out of copper and the others are made out of steel.

Q And I think you said this was somewhat oversize.

A Yes. And of course I never could use it because it was about a half inch or three-quarters too wide.

THE COURT: Too big to use in a heating device and not big enough to use on a Hudson?

A Yes.

(Testimony of Charles Atherton.)

Q BY MR. FOUTS: I hand you Plaintiff's Exhibit 7, which you have identified as one of your make, and I will hand you Defendant's Exhibit A, which you have testified was the first register you made, and I will ask you to point out, if you can find it in either of those, the rods extending across the opening of the main frame.

A No, there is none in either of them, and I never made any with them in.

Q In these registers of your manufacture what was it that you depended upon as the limiting stop to limit the opening movement of the shutters?

A Well, if we had a 10 by 12 box the wall of the box would be the limiting opening of the shutters at all times because there is one shutter less in the register than there are inches in the opening, and that gives a half-inch play, and the movement is just one-half inch. So that opens it at a right angle when it hits the side of the box?

Q When what hits the side of the box?

A The stop or the parting strip.

Q What do you mean by the parting strip? Point it out on this Exhibit A.

A This strip through here. When that opens that hits the side of the box, and that governs the louver opening here at right angles.

Q Then by the parting strip you mean this bar?

A Yes.

Q The thing which in the claims of the patent is called a bar; that is what you mean by a parting strip?

A Yes.

Q That, as I understand you, struck at its end against the outside frame of the register?

(Testimony of Charles Atherton.)

A Yes.

Q And in that way limited the opening movement of your shutters?

A Yes, at all times.

Q Where, now, in either of those registers do you find shoulders which engage with that bar or parting strip, as you called it, and by their engagement with it serving to limit the opening movement of these shutters?

A I never used that. I just cut it away enough so as to not show the cut from the face of it in the register so as to spoil the design.

Q To whom, if anyone, did you show this first register which you say you made, that is, Defendant's Exhibit A?

A I showed it to Mr. Herbert Lindsay.

Q Can you think of anybody else who saw it?

A A few others that were interested.

Q What was your purpose in showing it to Mr. Lindsay and these other people?

A I wanted to promote a company.

THE COURT: Did you promote a company?

A Yes; along with a valve that I had patented.

Q BY MR. FOUTS: Where was this register when you showed it to Mr. Lindsay?

A 1164 East Colorado, Pasadena.

THE COURT: When was that?

Q BY MR. FOUTS: What was the date you showed it to Mr. Lindsay?

A I can't tell the date, but sometime in April.

Q Of what year?

A 1923.

(Testimony of Charles Atherton.)

Q After you showed this register to Mr. Lindsay, what was done in the way of forming a company?

A It was successful. I told him of the—

THE COURT: You mean you did organize a company?

A We formed a partnership.

Q BY MR. FOUTS: State as nearly as you can when you first made up one of these registers of the type of Defendant's Exhibit A and actually installed it in a home.

A About that time, the latter part of April, 1923, or first of May sometime.

Q About how many did you install in homes in 1923, for example?

A Very few. We only used them where we couldn't use the other register, what we call a cross closet. If we opened the backs that came in the register, there was one piece, and when it was opened it was shut, because the air would come in the back and it wouldn't be opened. So we put in a cross closet and we put in a louver.

Q The fact is you installed only a few in 1923, as you say?

A Yes.

Q And in 1924 did you install any?

A I installed a few then. Of course I had men working for me, and I don't know how many were installed. We only used them where it was necessary.

Q If you know of any of these registers which you installed in either 1923 or 1924, and which have been in use in the plaintiff's installation since that time, please state where that installation was made.

(Testimony of Charles Atherton.)

A It was made on Chandler Boulevard, San Fernando Valley, which used to be Sherman Way.

Q Is that in Los Angeles?

A Yes.

Q Who lived in this place where you made that installation?

A Emil Bossard.

Q I thought he lived in Van Nuys.

A Well, Van Nuys is in the city of Los Angeles.

Q State as nearly as you can when it was you installed that register in Bossard's home.

A How is that?

Q State as nearly as you can just when you put that register in Bossard's home.

A In the latter part of April or first of May.

Q What year?

A 1923.

Q When did you last see these registers in Mr. Bossard's home?

A On Wednesday the 8th, 1929.

THE COURT: The 8th of what?

A The 8th of this month.

THE COURT: Wednesday, May 8, 1929?

A Yes.

Q BY MR. FOUTS: You mean last Wednesday night, do you?

A Yes.

Q Who was with you when you called at Mr. Bossard's home last Wednesday night or evening?

A Mr. Bossard was there, and his wife and Mr. Lindsay.

(Testimony of Charles Atherton.)

Q At that time what can you say about the registers which you say you had previously installed in that house, as to whether they were still in use?

A Yes, sir.

Q What do you mean: that they were still in use?

A Yes, sir; they were in the wall.

Q Did you try them out this last Wednesday evening to see if they were operative?

A Yes, sir.

Q How many of those registers did you install in Mr. Bossard's home at that time?

A I forget whether it was two or three; I don't remember.

Q How many did you observe last Wednesday night when you called there?

A I saw two.

Q Where were they located, in what rooms?

A One in the livingroom and the other in the bedroom.

Q Take this one in the livingroom particularly. Where was it located with respect to company that might be shown into that room? Was it where they could see it?

A Yes, sir. It was right by the door and they could see it from any part of that livingroom.

Q It was public there you would say then, would you?

A Yes, sir.

Q What, if anything, was done to those registers, or to any one of them, when you visited Mr. Bossard's home?

A I went out there with the intention of taking one out, and we did. Mr. Bossard took it out and we initialed it, each and every one of us.

(Testimony of Charles Atherton.)

Q Did you have that register that you say was taken out of Mr. Bossard's home?

A Yes, sir.

Q Will you produce it, please?

A Yes, sir.

MR. FOUTS: I think it has been sufficiently identified for admission, and I would like to have it entered in evidence as Defendant's Exhibit D.

THE COURT: It may be received.

MR. FRANKLIN: Just a moment, before introducing that in evidence. Was the number of that house on Chandler Boulevard No. 13,015 East Sherman Way?

A One minute, and I will see if I have got that address. It sounds like it.

MR. FRANKLIN: I just wanted to check that with the answer to the bill of particulars. Yes, that is correct. No objection.

THE COURT: It may be received.

(Defendant's Exhibit D.)

THE COURT: We will suspend at this time for the noon-recess. The Court will take a recess at this time until two o'clock.

(Recess was had until 2 o'clock p. m. of this day.)

(Testimony of Charles Atherton.)

AFTERNOON SESSION,

2 o'clock.

CHARLES ATHERTON

recalled.

DIRECT EXAMINATION

resumed.

BY MR. FOUTS:

Q Please look at this register, which has just been offered in evidence as Defendant's Exhibit D, and state in what way, if at all, that register has been modified in its structure and operation since the time it was first installed in Mr. Bossard's home.

A The register is made by the Jones Register Company. All I put in was the louvers and we put them in because there wasn't enough air space.

Q This outside part is what you are talking about as the Jones register, is it?

A Yes. And the face.

Q Has this exhibit, including that part that you call the Jones register, and your louvers, been changed any, and, if so, in what respect, since you put it in Mr. Bossard's home?

A No; it is all there just the same as I put it in.

Q Who took this out of Mr. Bossard's house?

A Mr. Bossard himself.

Q And in whose custody has it been since it was taken out of his house?

A It has been in my custody.

(Testimony of Charles Atherton.)

Q How do you know, Mr. Atherton, that this is the identical register that was taken out of Mr. Bossard's house?

A I initialed it at the top.

Q Read what you put there.

A My initials are "C. A., 5/8/29."

Q And when did you put that on there?

A Along about April, 1923.

Q No; I mean when did you put those initials of yours on there?

A Last Wednesday of this week.

Q You have said that that register was placed in Mr. Bossard's house when?

A About April or May, 1923.

Q Who actually put the register in Mr. Bossard's house?

A He himself.

Q You mean Mr. Bossard did?

A Yes.

Q You didn't do it?

A No.

Q What was the nature of the transaction you had with Mr. Bossard?

A Well, Mr. Bossard being a furnace man and sheet-metal worker, he put it in himself, and installed it to save money. He installed the whole system.

Q But you furnished the registers to him; is that the idea?

A Yes; along with the furnace and switch light and transformers and so forth. It was a full installation of the furnace. That means the furnace was electrically controlled.

(Testimony of Charles Atherton.)

Q Since you furnished these registers to Mr. Bos-sard back in 1923, how extensive has been your business in the manufacture of registers of this type, about?

A It could have been more if I could have done it.

THE COURT: No. The question is how much was it; not what it could have been.

A I didn't use very many of them.

THE COURT: Well, how many did you use?

Q BY MR. FOUTS: I mean clear up to the present time.

A Oh, clear up to the present time?

Q Yes, sir; from that time up to the present time is what I am talking about.

A I would have to guess at that.

Q All right, guess at it and make it as approximate as you can. I want to see whether it was any considerable number or whether it was just a few.

A Well, if you take the louvers and not the rest, I have furnished probably approximately 3000 of them.

Q And by that you mean this assemblage such as is shown here in Exhibit 7?

A Yes.

Q But that combined with the outside part you say you have not furnished so many of?

A No. The registers I don't make.

Q When did you first hear of the Waterloo Register Company, which is the plaintiff in this suit?

A Oh, I heard of them along about 1926.

Q. That is the first time you ever did hear of them, is it?

A Yes.

MR. FOUTS: You may cross-examine.

(Testimony of Charles Atherton.)

CROSS EXAMINATION

BY MR. FRANKLIN:

Q Is it not a fact, Mr. Atherton, that in the year 1923 you were buying registers from the firm of Holbrook, Merrill & Stetson?

A Yes, I bought—

MR. FOUTS: Just a moment. I don't know that that is proper cross-examination. I don't know what the bearing of the question is on the issues here.

THE COURT: I regard it as a preliminary question. I don't know, myself.

MR. FOUTS: All right.

A Yes, I bought registers of them, and always have for at least twelve years.

Q BY MR. FRANKLIN: You say you were manufacturing registers at the same time in 1923?

A No; I was manufacturing louvers only, and backs, different louvers.

Q The louver is what is called for in the patent here, the frame and the shutters and the rod that connects the shutters, and the shoulders engaged by the rod. You were making that in 1923?

A Yes; I made some in 1923.

Q Are you sure it was in the year 1923, or was it later? Isn't it possible that you were buying these registers from another company in 1923 and made yours not earlier than 1924?

A I bought some and made some.

Q In the year 1923?

A Yes, sir.

(Testimony of Charles Atherton.)

Q I call your attention to your Exhibit A. As I understood your direct testimony, you said this was the first one you ever made.

A Yes, sir.

Q Was that made by hand?

A The biggest part of it.

Q The biggest part of it was made by hand?

A Yes, sir.

Q What other parts were not made by hand?

A I had a piercing die made for cutting the ends.

Q You cut the ends with a piercing die?

A Yes.

Q And made all the rest of it by hand?

A Well, I had a press to press this out here. The *bading* was done on a beading machine. This roll was made on a beading machine, and this was pressed with a two-ton press from the Niagara Machine Tool Company.

MR. FOUTS: You say "this" was done, and "this" was made so and so, and the record doesn't show what you are talking about. What do you mean by "this"? Do you mean that offset along the edge?

A Yes.

Q Along the edge of each shutter?

A Yes.

Q BY MR. FRANKLIN: How were the knuckles bent around the pins or the pivots? Was that done by hand?

A Which one is that?

Q That is, the knuckles that go around the pivots.

A That was done on a beading machine. That can be done two or three different ways—or a folder.

(Testimony of Charles Atherton.)

Q But it was done at this same company, was it, the Niagara Machine Company?

A Yes. But it is a different machine.

Q A different machine. But was it done at your shop?

A Yes, sir.

Q You had a machine at your shop?

A I had machines to do all kinds of sheet-metal work.

Q That is, to bend that knuckle around the pin?

A Yes, sir.

Q But not to put that bead on?

A No. That was made by the press.

THE COURT: Was it made at your shop?

A Yes, at my shop.

THE COURT: I understood it was made in his shop by a machine, which he named.

Q BY MR. FRANKLIN: I will ask you again if you impressed that bead on these shutters by a machine in your shop.

A Yes, sir.

Q And all the machinery that you used in manufacturing this device was in this shop?

A Yes, sir; absolutely.

Q Did you own a two-ton press in 1923?

A Yes, sir.

Q And where was that located?

A That was located at 1164 East Colorado.

Q 1164 East Colorado?

A Yes, sir.

Q Pasadena?

A Pasadena.

Q Referring to this device which you say was taken off of a Hudson automobile, which is marked Defend-

(Testimony of Charles Atherton.)

ant's Exhibit B, I think it is; is that the way it was when you took it off of the car?

A That is the way the louvers were, but there was a different frame here.

Q You made this frame yourself, did you?

A Yes.

Q What became of the frame that it was in?

A I suppose it was destroyed.

Q What is the difference between this frame and the one you took off?

A I had to, in order to make this up, put the frame out. It didn't have an edge where I could put nails in here. It had a straight edge here, with these bars running through, and it was pivoted on the rectangular frame on the outside, with a little washer slipped over it. And I took that off and made this bar wide enough so as to hammer over the nails and pins to hold this in to see if it would work properly, to give me an idea of what I could make and see if it would work.

Q Why did you take the frame off, the original frame, and put this frame on it?

A To experiment.

Q You were experimenting with it?

A Yes.

Q This device, which you say is the same as the patent, has no shoulders on it which are engaged by that bar to limit the opening movement of the shutters, has it?

A No; but it had a stop here.

Q I am not asking about that. The patent claim calls for shoulders engaged by the bars. And there are no such shoulders engaged by the bar on this device?

(Testimony of Charles Atherton.)

A No. Those shoulders there are all that are on there.

Q But they are not engaged by that bar to limit the movement of the shutters?

A Not on that one, no.

Q Then this does not contain the combination as set forth in the claim of the patent, does it?

MR. FOUTS: We never contended that it did, your Honor.

THE COURT: I understand his device that is in evidence as the device he makes doesn't have that either.

MR. FRANKLIN: Very well.

THE COURT: Am I wrong or right? His testimony was he never used that shoulder.

MR. FRANKLIN: I don't understand his testimony that there are no shoulders on his device, because there are shoulders.

THE COURT: He said he limited the movement by the box in which the device was inserted.

MR. FRANKLIN: That may be; but that is something additional that is put on there. I didn't understand him that he denied that there were shoulders on the device.

THE COURT: I wouldn't say that either. You asked him what he used, or somebody did, and he said he used—

MR. FOUTS: We don't deny that there are shoulders on the various shutters of those devices that Mr. Atherton made. There are shoulders there. There had to be to stamp out those lugs to which this bar is pivoted. But the claim calls for those shoulders abutting against the bar there to form limiting stops in the opening movement of the shutters. Perhaps in some associations if you take Mr. Atherton's louvers, as he calls them, one could throw

(Testimony of Charles Atherton.)

that thing around maybe far enough to make those shoulders engage. But they were not intended for that and were not used for that purpose.

MR. FRANKLIN: Our position is it is immaterial what they were intended to be used for; that if they are there that infringes the patent. And as for the fact that the shoulders are on there and they had to be there to pivot the bar, our contention is that that is not true. There are no shoulders on these shutters, are there?

A There are no shoulders on those shutters, no.

Q You say in 1923 you organized a company with Mr. Lindsay to make valves.

A Valves for registers or louvers, electric valves that I had a patent on. The electric valve was the chief asset.

Q What was the name of that company?

A The Hy-Lo Unit Heating Company of 961 South Fair Oaks, Pasadena.

Q Have you any way of fixing the matter definitely in your mind that it was the year 1923 when you first made your louver?

A Yes, sir.

Q Can you state any event associated with that time?

A Well, every year I made a new furnace, that is, a new type of furnace, and along with this furnace in 1923 I put this register out at the same time. But the furnace I discarded at that time as it was too heavy to meet competition, and I only made one of that kind. I made right after that in the same month, January, a furnace taking air in from the top, and this louver I also put out in 1923, which I recollect very much for this furnace

(Testimony of Charles Atherton.)

I never did use, only that one. I made that one because it was a superheater.

MR. FOUTS: You never made but one what?

A One furnace of that type, and that recalls to my memory that I made that shutter that year too, because I had to change my furnace.

Q BY MR. FRANKLIN: How many of these louvers did you sell in the year 1923?

A Very few.

Q Have you any sales receipts or slips to show that you sold any of them?

A Well, of course, when I organized the new company my books were turned over to them, and of course these little day ledgers and things are gone. And of course these louvers I made mostly for canopies over the stove or for hoods in houses. They had an ordinance in Pasadena which required 48 square inches, and I made these little louvers 6 by 8, and they fit in this square little pocket so that in the wintertime they could shut and open and close that so as to keep the heat in the kitchen. And I sold that as regular sales to the trade, and I made everybody that wanted one come in, and they installed it in their houses some place, I don't know where it was. But I used very few in the heating game in 1923, only where I had to, because they were hard to make up.

Q The only device that you installed in 1923, which you claim is now in use or in existence, is the one that you brought out from Van Nuys, which is marked Exhibit D; is that right?

A Oh, there was more than that used or installed.

Q That is the only one that you know of, though?

(Testimony of Charles Atherton.)

A The only one that I could get a record of at the time. I had twenty-three houses in Arlington Gardens at the time, and I had forty-five houses in El Molino Gardens at the same time, and I also had at Calveras about sixteen houses, and also up in another Garden up in North Altadena I had about twenty-four houses.

Q Did you make any effort to bring any other devices except that one that was made in 1923?

A Yes, I did. But previous to this case I was around on my same jobs, when I was before Judge Head, looking for valves. I used to be able to go in any of the houses because I knew them; but you can't get in these houses any more like you used to, for other reasons.

Q Then you have been unable to produce any device made in 1923, which is now in use, except this one that you brought in? That is the only one; is that it?

A It is hard for me to do that, because I had a foreman. They did the work, and if they required a louver they made it and put it in. I did very little of my outside work for I had a machine shop on the corner of Michigan there close to me, and also the Hy-Lo Unit Heating—I was interested in that—and also the sheet-metal works, and I was very busy.

Q These louvers are connected with a hot air furnace, are they not?

A They are put on an opening for hot air at the end of the pipe in the rooms.

Q And the hot air furnace is placed under the house?

A Sometimes.

Q Sometimes?

A Yes.

(Testimony of Charles Atherton.)

Q Isn't that a building requirement, that they have to be placed in a cellar?

A No, sir.

THE COURT: Let's not go into that. It is placed some place.

Q BY MR. FRANKLIN: Where was it in this house out at Van Nuys, where was it placed?

A The man, Mr. Bossard, dug a basement for it.

Q And the registers were put in at that time?

A Shortly after he had made preparations for roughing in the furnace, yes.

Q That is, the furnace was put in the basement, and then he later put the registers in?

A No. He had to dig the basement first, and then later on he put in the furnace.

THE COURT: The question is about that time or within a few months these were put in?

A Yes. I don't know when he dug the basement, but it was put in the basement.

Q BY MR. FRANKLIN: You dug the cellar and then you put the furnace in, and then you put the registers in?

A The registers and furnace all went in together.

Q In the year 1923 were you in partnership or in business with anyone?

A Yes, sir.

Q Who was that?

A Herb Lindsay.

Q Were you in partnership with Mr. Chester?

A Yes, sir.

Q This gentleman here in the light suit?

(Testimony of Charles Atherton.)

A Yes, sir.

Q What was that business at that time with Mr. Chester when you were in partnership with him?

A We were making a patent valve, that is, Mr. Chester was, or we had it together in partnership. And I got an idea of another valve, and I had it patented and organized the Hy-Lo.

THE COURT: Why do you call it Hy-Lo?

A Hy-Lo Unit Heating Company.

THE COURT: That has nothing to do with high, low, jack in the game, has it?

A No.

Q BY MR. FRANKLIN: Mr. Chester, as I understand it, had nothing to do with your Louver business at that time?

A No. The shop he had was on the corner, or that we had together, and he was up there operating it. I think it is 1172. It is on the corner of Michigan and Colorado.

Q Then you had one factory in which you manufactured valves, where you were in partnership with Mr. Chester?

A Yes.

Q And another factory where you manufactured louvers independently by yourself?

A Yes, sir.

Q And the two factories were close together?

A Yes.

Q And did Mr. Chester have an opportunity to visit your louver factory very often?

A He was in there very little.

(Testimony of Charles Atherton.)

Q But he was in there several times in 1923?

A Well, I don't think he ever did any work in there. He would just come in on certain occasions.

Q You know Mr. Harold Wysong, do you not?

A Yes, sir.

Q Was he associated with you in the louver business in 1923?

A No, sir.

Q Was he in and out of your shop very often in 1923, your louver shop?

A No, sir.

MR. FOUTS: If your Honor please, I don't know where this is leading to. It is clear outside of anything that was brought out on the direct. I don't want to object, but still I don't want this to run amuck.

THE COURT: No.

Q BY MR. FRANKLIN: Did Mr. Wysong work for you in the sheet-metal shop where you made your louvers?

A Not in 1923.

MR. FRANKLIN: I think that is all.

REDIRECT EXAMINATION

BY MR. FOUTS:

I don't know whether the Court understands what is the purpose of these valves they have talked about, or whether you care anything about it.

THE COURT: No; I am not interested.

Q BY MR. FOUTS: Just one thing, Mr. Atherton, that occurs to me, and that is in respect to that old Hudson register there which you were asked about, Defendant's Exhibit B. You said that you took off the old out-

(Testimony of Emil R. Bossard.)

side frame and put on another frame, which is the one that is on the exhibit now. Is that what you said?

A Yes, sir.

Q And you said you did that in an experimental way?

A To get an idea.

Q What idea were you fishing for?

A I was trying to get a louver that would be flush with the wall of the box inside and not project in, to make what we call a wafer louver. Of course the Court don't know, but all of these other louvers manufactured by the different firms run in the wall so deep, maybe two and a half, three or four inches deep, that when the air comes up here that cuts off the throat of the air in this box or the capacity. But this louver does not because it fits flush with the plaster inside.

Q I hardly believe that that is very material in this case, and I will not ask any more questions about it.

THE COURT: I think he has answered your question and then some.

MR. FOUTS: I don't think it is important and I have no more questions to ask.

MR. FRANKLIN: That is all.

EMIL R. BOSSARD,

called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FOUTS:

Q Please state your name, residence and occupation.

A Emil R. Bossard.

(Testimony of Emil R. Bossard.)

THE COURT: What town do you live in?

A 13,015 Chandler Boulevard, Van Nuys.

Q BY MR. FOUTS: And that, I understand, is part of Los Angeles?

A Yes, sir.

Q And now your occupation?

A Sheet-metal worker.

Q Where is your place of business?

A I am employed by the mechanical department of Los Angeles County.

Q Here in the city, is that right?

A Yes, sir.

Q You say the number of your home is 13,015 Chandler Boulevard, Van Nuys?

A That is what it is now, yes, sir.

Q Was it something else at some other time that you know of?

A Yes.

Q I mean this particular house. Did it have another street number?

A Yes.

Q What was that, and what was the occasion of the change?

A It was 13,005 up until 1926, and I built a little three-room house to one side, and the Van Nuys post office I guess changed my number, and they put 13,005 on the new house that I built and gave me 13,015.

Q That was, you think, about 1926?

A Yes.

Q In 1923 then the number of your place was what?

A 13005.

(Testimony of Emil R. Bossard.)

Q Do you own this place?

A Yes, sir.

Q When did you buy it?

A I bought it in 1922.

Q 1922?

A Yes.

Q By what means are you able to fix the date that you have just given for buying this residence?

A I have got a deed for it.

Q Have you got your deed with you today?

A I don't know; I think my wife has it. I told her to bring it here.

THE COURT: Did you look at the deed and is that the date you find on it?

A I haven't looked at the date, but I am sure that it was in 1922.

MR. FOUTS: If your Honor please, we feel that it is rather important to establish another date, and I would like to know exactly when Mr. Bossard bought this house.

Q I hand you a paper here and ask you to look at it and tell what it is, if you know.

A It is dated the 26th day of—

THE COURT: No. The question is, What is it?

A It is the deed to the place.

THE COURT: The deed to the house that you have spoken of?

A Yes.

THE COURT: All right.

Q BY MR. FOUTS: Now, then, give the date of it, please.

(Testimony of Emil R. Bossard.)

THE COURT: That speaks for itself. So we don't need him for that.

MR. FOUTS: That is true, if we are going to put it in as an exhibit in the case.

THE COURT: You can read it. He is a difficult witness and hard to make any speed with. What is the date of the recording stamp on it?

MR FOUTS: "Recorded at request of Title Insurance & Trust Company, July 22, 1922, at 8:30 a. m." I will ask counsel for the other side to verify what I have read.

MR. FRANKLIN: I wish to call the attention of the Court to what appears to me to be an inconsistency here; that the number that he states of his house today does not appear to be the same number that was set up in the bill of particulars as to where this device was registered. Now I have made certain investigations—

THE COURT: Let's not get that mixed up with the question as to whether this is the deed to the house of which he speaks.

MR. FRANKLIN: Then I will object to that deed.

THE COURT: There is nothing to object to. He merely uses it as a memo to refresh his recollection.

MR. FRANKLIN: He has testified that he lives at a house that is different from the number set up in the bill of particulars, and I object to all of that testimony.

THE COURT: You can't do that, either, because that is too broad.

MR. FRANKLIN: They will have to stick to the address given in the bill of particulars.

THE COURT: We are now dealing with the date that he bought this house, and let us get through with that.

(Testimony of Emil R. Bossard.)

MR. FRANKLIN: Well, it seem to me it is entirely irrelevant and immaterial if he bought a different house that is not specified in the bill of particulars.

THE COURT: I don't agree with you on it.

MR. FRANKLIN: Well, I make my objection and take an exception.

THE COURT: Yes.

MR. FOUTS: It doesn't seem necessary to put this in evidence, in view of the fact counsel has already looked at it, and he has noticed the date that is on it.

THE COURT: Does the number of the house appear in the deed, the street number? Probably not. It is just a matter of refreshing his recollection as to a date, is all.

MR. FOUTS: That is all I have used it for.

A The description of the property—

THE COURT: Never mind; let's not get into that. If you don't know whether the street number is on it, I won't have you spend a lot of time trying to find it.

MR. FOUTS: Now we will try to straighten out this number matter if we can.

Q The present number of your house is what?

A 13,015 Chandler Boulevard.

MR. FOUTS: I call attention of counsel here to the fact that in our answer we give the address of Mr. Bossard as 13,015 Chandler Boulevard, Van Nuys. Now where is the inconsistency?

MR. FRANKLIN: But he said 13,005.

THE COURT: He said it used to be, and that it was changed to 13,015.

Q BY MR. FOUTS: In 1926 it was changed, or about that, you said?

(Testimony of Emil R. Bossard.)

A Yes, sir.

MR. FOUTS: Now, if there is any trouble about it, we will try to straighten it out.

THE COURT: Let's not have any argument now about it. His testimony is clear enough that originally it was a certain number, and then it was changed.

MR. FOUTS: The reason I brought that out was to avoid any confusion, for I knew there had been a change.

Q Are you acquainted with Charles Atherton, the defendant in this suit?

A Yes, sir.

Q How long have you known Mr. Atherton?

A Probably twenty-five years, or something like that. Twenty-five years or more. It has been a good many years.

Q Did you have any business with Mr. Atherton say in 1923, or thereabouts?

A Yes, sir.

Q What was the nature of the business you had with him?

A I bought a furnace from him.

Q And what did you intend to do with that furnace?

A Put it in my house.

Q Put it in that house that we have been talking about that you bought and got a deed for in July, 1922, I believe was the date?

A Yes, sir.

Q How long had you had that house at the time that you bought this furnace of Mr. Atherton?

A One year, or just about one year. We lived in the place two years.

(Testimony of Emil R. Bossard.)

Q You had lived in the place two years before you bought that furnace?

A Yes, sir.

Q Then you had lived in the place one year before you bought it? Is that what you are trying to say?

A Yes, sir.

Q Then you bought a furnace from Mr. Atherton about a year after you moved into that house?

THE COURT: Two years after he moved in and one year after he bought it.

MR. FOUTS: I beg your pardon; you are right.

Q Have you any other way of fixing that date excepting by the deed to your house, or is that the best you can do at the present time?

A That is about the best I can do. I have no receipts or papers.

THE COURT: How do you fix the time that it was one year after you bought the house that you put in the furnace? Is that just your recollection?

A It is my recollection that I bought a machine in September of 1923, and we installed the furnace a few months before I bought the machine.

Q BY MR. FOUTS: What kind of a machine are you talking about?

A An automobile.

THE COURT: But you don't know what month it was in 1923 that you put in the furnace, do you?

A I believe it was in May. That is my recollection, that it was in May. It might have been a week or two later, or a week or two earlier, but it was around that time.

Q BY MR. FOUTS: Just what did you get from Mr. Atherton?

A A furnace complete.

Q And what do you include with the furnace?

A A register and pipes and everything to install the furnace complete.

Q How many registers went with that furnace; do you remember?

A There was a double register, one for the bedroom and one for the livingroom.

Q That made two registers at the time you got the furnace?

A Yes, sir.

Q Who did the actual work of installing that furnace and the register in your house?

A I did.

Q Did you have to get any permit from anybody before you could go ahead to do that work?

A No, I didn't get any permit that I remember of.

Q You owned the house and you did the work in your own house and under the understanding that you didn't have to have a permit?

THE COURT: That doesn't make any difference. He says he didn't get any. I suppose that was largely country out there then, wasn't it?

A No. But there were very few restrictions.

THE COURT: It wasn't part of Los Angeles, was it?

A Yes, it was in the city.

Q BY MR. FOUTS: Did you ever have occasion to do any other work on that particular property where you did get a permit?

A Yes, I did.

Q I would like for you to state what was the nature of that particular job and why a permit was required in that case.

A I installed a hot water heater and the only place that I had to put it was out on the back porch, and I made a four-foot extension on the porch.

THE COURT: Never mind the details. You got a permit for that?

A Yes.

THE COURT: That is under the fire ordinances, isn't it?

A Yes.

Q BY MR. FOUTS: Did a change have to be made at that time in any of the electrical connections to install that hot water heater?

A Yes, sir.

Q Where now are the furnace and the registers which you say you installed back in 1923 in your home?

A One of them is out to the house and the furnace and the rest is right there at the place.

Q The furnace is still there, is it?

A Yes, sir.

Q And one of the registers is still there?

A Yes, sir.

Q Where is the other one?

A The other one was taken out Wednesday night.

Q Who took it out?

A Mr. Atherton and the gentleman that was with him, I believe Mr. Lindsay, and myself, and my wife was present.

(Testimony of Emil R. Bossard.)

Q Was or was that not the same register, or one of them, that was put in the house away back yonder in 1923?

A Yes.

Q What change had been made in that register from the time it was first installed up to the time you took it out last Wednesday evening?

A No change whatever.

Q What can you say as to the satisfaction with which it operated during all of that time?

THE COURT: What has that to do with the patent? Is there an issue on that? Is there an issue on satisfied or dissatisfied customers?

MR. FRANKLIN: There is no issue on that.

MR. FOUTS: I wanted to show it was practical and operative all of this time. But I will drop it.

Q I hand you a device, which has been put in evidence here as Defendant's Exhibit D, and will ask you to look at it and say if you know what it is and where it came from.

A That is the register that came out of my house.

Q When did you say it was taken out of your house?

A Wednesday evening.

Q Last Wednesday evening?

A Last Wednesday.

Q You have identified this as being the register that was taken out of your house. Just how do you make that identification?

A I wrote my initials on it when it was removed from the house.

Q Point to your initials that you put on there.

A "E. R. B."

(Testimony of Emil R. Bossard.)

Q Down here below the louver?

A Yes.

Q And when were those initials put on?

A Wednesday evening.

Q What rooms in your house did you have these registers in?

THE COURT: He said sittingroom and bedroom.

MR. FOUTS: All right.

Q The sittingroom was your livingroom, was it, where you received your company?

A Yes.

Q And was or was not this register that was in that room hidden or was it open to inspection by anybody that might be in the room?

A It was right open in the livingroom.

Q Any company that came in could see it, is that right?

A Yes, sir.

Q What interest, if any, do you have in the outcome of this litigation?

A None whatever.

MR. FOUTS: That is all.

THE COURT: We will take a ten-minute recess at this time.

(Short recess.)

MR. FOUTS: If the Court please, I thought of another question or two I would like to ask the witness.

THE COURT: I thought you probably would. Take the stand again.

(Testimony of Emil R. Bossard.)

Q BY MR. FOUTS: I want to know if you are acquainted with Mr. Franklin, who represents the plaintiff here in this case.

A I met him at one time at my house, yes.

Q What was the occasion of Mr. Franklin's visit to your home?

A He wanted to look at the registers in the house.

Q And he found your home all right, and he found the register that he wanted to see all right; is that correct?

A Yes, sir.

Q And what register did you show Mr. Franklin at that time?

A That is one of them there, and the other one is out there now.

MR. FOUTS: That is all.

CROSS EXAMINATION

BY MR. FRANKLIN:

Q At the time that I called at your house it was quite recently, was it not, within the last two or three months or so?

A I think so, yes.

Q In installing these registers you first dug a cellar or basement and then put in the furnace and then the registers? Was that the sequence?

A I dug the cellar first, and set my furnace and run my pipe, and then put the registers in.

Q When was the number on your house changed?

A It was changed right shortly after I built the house next to me.

Q When was that?

(Testimony of Emil R. Bossard.)

A In 1926.

Q What is the number of the house next to you?

A 13,005.

Q That is the number now?

A That is the number now, yes, sir.

Q What was the number of that house before it was changed?

THE COURT: He built it. It didn't have any number until it was built. But what difference does it make? You saw the register and he lives in that house. His testimony was that in 1926 he built an additional house adjoining, and then that was given the number he used to have, and they gave him a different number for the house he bought in 1922.

Q BY MR. FRANKLIN: Was there a house by the number of 13,015 East Sherman Way in 1923?

A No, sir.

Q There was not?

A 13,015?

Q 13,015 East Sherman Way.

A No, I don't think there was any such number at that time.

Q Was there ever such a number at that time, or was there ever such a number as 13,015 East Sherman Way?

THE COURT: If you know.

A I never had that number, no.

Q BY MR. FRANKLIN: Do you know whether there was such a number as that?

A No, I don't.

MR. FRANKLIN: That is all.

(Testimony of Mrs. Elizabeth Bossard.)

MRS. ELIZABETH BOSSARD,

called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FOUTS:

Q Will you please state your name and tell us where you live?

A Elizabeth Bossard, or Mrs. E. R. Bossard; 13,015 Chandler Boulevard, Van Nuys.

Q How long have you lived in this particular location?

A Since 1922, or I think it is 1922. We lived there one year before we bought the place. We bought it in 1923.

THE COURT: Will the testimony of this witness vary at all from that of what her husband's was?

MR. FOUTS: No, it will not, your Honor. And, if the other side is willing to stipulate that the testimony that Mr. Bossard has given will be practically repeated or substantiated by Mrs. Bossard, I will not ask any further questions.

MR. FRANKLIN: I would rather not stipulate that, your Honor.

THE COURT: Well, address yourself to the point, then.

Q BY MR. FOUTS: At the time that you moved into this house or bought it, I will say at the time you bought it, what kind of a system did you have for heating it?

THE COURT: What is the difference? Let's find out whether or not she knows anything about this register.

MR. FOUTS: All right.

(Testimony of Mrs. Elizabeth Bossard.)

Q I show you a device, which has been brought here to Court, and will ask you to look at it and state if you know what that is.

A Yes; it is a register, I guess, from our house. Yes, it is. That is the register out of our livingroom or out of our bedroom.

Q When was that taken out of your bedroom?

A The date and my initials are on there, "5/8."
Those are my initials there.

Q That means May 8th?

A Yes.

Q Just last Wednesday, then?

A Yes.

THE COURT: Two days ago?

A Yes.

Q BY MR. FOUTS: How long had that been in your home before it was taken out at this time?

A That was put in in 1923.

Q About what time in the year 1923, if you know?

A I think it was the month of May.

THE COURT: That covers your story, doesn't it?

MR. FOUTS: It does.

THE COURT: You heard what your husband testified to here, did you not?

A Yes.

THE COURT: Have you anything in connection with the matter that is any different than what he told us?

A No.

Q BY MR. FOUTS: In other words, you substantiate what he testified to?

A Yes.

MR. FOUTS: That is all.

(Testimony of Herbert Lindsay.)

CROSS EXAMINATION

BY MR. FRANKLIN:

Q Do you know Mr. Atherton?

A Yes.

Q When was the first time you knew him?

A We knew him back in Denver several years ago.

Q Did you know him here in 1923?

A Yes.

Q Was he out at your place in the year 1923?

A Yes.

Q Do you know of your own knowledge that you bought your register here from Mr. Atherton in 1923?

A Yes.

Q Do you know when the number of your house was changed?

A Yes; when we built the new house. We have a frontage of 175 feet—

THE COURT: Never mind that. You would tell the same thing that your husband did, that when you built the new house the numbers were changed?

A Yes.

Q BY MR. FRANKLIN: When was that?

A In 1926.

MR. FRANKLIN: That is all.

HERBERT LINDSAY,

called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FOUTS:

Q Please state your name and residence.

(Testimony of Herbert Lindsay.)

A Herbert Lindsay; 990 East Walnut, Pasadena.

Q What is your business, Mr. Lindsay?

A Manufacturing business.

Q What do you manufacture?

A Electric control valves and electrical equipment for furnaces.

Q Do you know Charles Atherton, the defendant in this case?

A I do.

Q How long have you known him?

A Since April, 1923.

Q How did you come to know Mr. Atherton at that time? Did you have any business dealings with him?

A Well, he had a new valve coming up and he wanted to make some preparation for its production, and I went into partnership with him along about that time.

Q What do you mean by a valve?

A It is a valve that controls the flow of the heat to the furnace.

Q It hadn't anything to do with hot air, then?

A No.

Q It is not a hot air register?

A No.

Q At that time did Mr. Atherton have anything else that he wanted promoted other than the valve you speak of?

A He had the registers he had in mind that he was going to produce.

Q What, if anything, did he tell you or show you at that time in the way of these hot air registers?

(Testimony of Herbert Lindsay.)

A He had what appeared to be a copper louver and the front of an automobile, and he explained to me where the air would go through, and also mentioned that these homes where they had the shutters on the windows operated something similar.

Q Do I understand that this copper device was on the front of an automobile?

A No. There were three different things he mentioned, a copper louver and the louver of an automobile, and then he mentioned about the louver on the window of homes.

Q What, if anything, did he show you at this time that you testified about?

A He showed me this copper louver and the front off of the automobile or the louver off of the automobile.

Q I hand you a device, which has been entered in evidence here as Defendant's Exhibit A, and will ask you to look at it and state if you know what it is, and if you have ever seen it before.

A This is a louver and I have seen something similar to it. I don't know whether it is this particular one or not.

Q When did you first see one like that?

A It was about the middle of April, 1923.

Q Did you say it was something similar to that?

A It was one like this. I don't know whether this is the particular one or not that I saw, but it was in 1923.

THE COURT: You spoke of a copper louver. Is that the one you speak of when you say that is similar to it?

A It was one like it, but there is no identification mark to indicate whether this is the same one or not.

(Testimony of Herbert Lindsay.)

Q BY MR. FOUTS: If that is not the one, can you point out any differences between this one and the one you saw back at that time?

A There is no difference.

Q There is no difference?

A No.

Q Then it is your testimony that this is either the identical thing you saw or one identically like it, is that correct?

A Yes, sir.

Q And this other exhibit here, Defendant's Exhibit B, I will ask you to look at and state whether or not you have ever seen it before.

A I have.

Q What is it?

A That is the front off of an automobile.

Q Is that what you were talking about in one of the last answers you gave as a register going in front of an automobile?

A Yes, sir.

Q When did you first see that?

A Well, he had either that or an identical one there at that time in April, 1923.

Q What was Mr. Atherton's idea, as you understand it, in showing you these devices back there at that time?

A He wanted me to invest some money to produce these in larger quantities than what he was producing them in.

Q And what was the result of this exhibition to you of these devices at that time?

(Testimony of Herbert Lindsay.)

A We formed a partnership and built a building to manufacture them in.

Q When did you do that?

A The property was purchased the latter part of 1923, and the building was up the first ten days of 1924, in January.

Q What was that paper you pulled out of your pocket and consulted?

A That is a deed to the property that I purchased at that time.

Q Can you tell from that just when this property was purchased?

A It was the 11th day of December, 1923.

Q Will you let opposing counsel look at that? We are perfectly willing to put it in as an exhibit, if you want it.

MR. FRANKLIN: We will object to the use of it as an exhibit.

THE COURT: He says that is the property.

Q BY MR. FOUTS: That refreshes your recollection as to the exact date that you bought this property, does it?

A It does, yes, sir.

Q With reference to that date, which you say—What is the exact date on that?

THE COURT: December 11, 1923.

Q BY MR. FOUTS: With reference to that date, now, when was it Mr. Atherton showed you these devices which are in evidence here?

A About the middle of April of 1923.

Q It was before you bought that lot then?

(Testimony of Herbert Lindsay.)

A It was.

Q I hand you an exhibit here, Defendant's Exhibit D, and ask you if you know anything about what that is.

A This is a register.

Q Where did it come from?

A It came from Mr. Bossard's residence.

Q How do you know that?

A I was present when it was taken out on May 8, 1929.

Q How can you identify that as being the identical one that was taken out of that house?

A Because it has my initials here on the louver.

Q And when were those initials put on?

A On May 8, 1929.

Q At the time this was taken out of that house?

A Yes, sir.

MR. FOUTS: That is all.

CROSS EXAMINATION

BY MR. FRANKLIN:

Q When did you form a partnership with Mr. Atherton?

A In April, 1923.

Q Is it not a fact that Mr. Atherton was in partnership with Mr. Chester at that time?

A That didn't have any effect on what I was doing with Mr. Atherton. It was an entirely different proposition from what Mr. Atherton had with Mr. Chester.

Q Your place of business was located where at that time?

A It was located on North Lake Avenue.

Q In Pasadena?

(Testimony of Herbert Lindsay.)

A Yes, sir.

Q Mr. Atherton seems to have been a rather active business man at that time.

A He was.

Q He was in partnership with Mr. Chester and in partnership with you, and was in business for himself making registers?

A Yes, sir, that is correct.

Q You say there was a corporation organized.

A No, sir, I didn't say that. It was a partnership.

Q Was there a corporation organized in 1923?

A No, sir.

Q Wasn't there a corporation organized to manufacture valves?

A No, sir; it was a partnership.

Q No corporation?

A No, sir, not in 1923.

Q Isn't it a fact that that partnership was for the purpose of making valves?

A No, sir. We had our stationery printed for registers, tool and die work, and screw machine products at that time.

Q When did you start manufacturing these louvers?

A Mr. Atherton manufactured them and used them as he needed them in 1923.

Q Do you know how many he made in 1923?

A He took care of the sheet-metal end of it and I had nothing to do with that. I was on the outside.

THE COURT: The question is do you know.

A No.

(Testimony of Herbert Lindsay.)

Q BY MR. FRANKLIN: You don't know how many he made in 1923?

A No. I didn't keep track of them.

Q You don't know whether he made one or a hundred?

A No. But I know he made some, because I saw them.

Q How many?

A I saw a few around the shop.

Q Do you know that he sold any in 1923?

A Yes.

Q To whom did he sell them?

A To Mr. Bossard.

Q Who else?

A I don't know.

Q You don't know anyone else?

A I didn't keep track of that end of it.

Q Did he ever get into quantity production on these louvers?

A Yes.

Q When?

A A little later, as the years went by and as the business demanded it, he did.

Q How many did he make in the first part of 1924?

A He took care of the manufacturing end of it and I took care of the selling end of it.

Q You don't know how many he made in the first part of 1924?

A No. I didn't keep track of that end of it. I was on the outside.

Q You don't know how many he sold in that period?

A No.

(Testimony of Herbert Lindsay.)

Q You can't recall the name of any purchaser in that period?

A Well, I was out traveling from time to time and had no occasion to come in contact with them personally, and I have got no way of knowing.

Q Then the only one you know about is the one that was sold to Mr. Bossard? That is the only one that you know definitely of, of your own knowledge?

A No. I probably could go out and hunt some more up for you if you would give me the time.

Q I am not interested in that.

THE COURT: I don't think you need to follow that any further.

Q BY MR. FRANKLIN: When did you dissolve partnership with Mr. Atherton?

A In 1925, about the middle of the year.

Q Was your business venture with Mr. Atherton profitable?

A It was.

Q To what extent?

A In what way do you mean?

Q Well, can you state generally about what profits you made out of the partnership with Mr. Atherton?

MR. FOUTS: I think I ought to object to that question.

THE COURT: The objection is sustained. It is not cross-examination, and I don't know that it would throw any light on the matter.

MR. FOUTS: If he is found guilty of infringement and they want to know what profits he has to cough up, that might be all right.

(Testimony of Herbert Lindsay.)

THE COURT: He said it was a profitable business.

A It is still going today.

MR. FRANKLIN: I will let it go.

THE COURT: He doesn't know how many they made.

MR. FRANKLIN: No; that is just it; he doesn't know how many he made, and Mr. Atherton has testified that he made very few of them. So I can't quite understand that it is inconsistent.

Q You say you travel on the road a great deal?

A Yes, sir.

Q And you just returned to Los Angeles recently?

A I did.

Q On what date?

A On the 8th.

Q On the 8th?

A Yes.

Q You state that you went out with Mr. Atherton to bring in this model from Mr. Bossard?

A Yes.

Q What date was that?

A That was on the 8th, in the evening. I got home in the morning.

Q You are not engaging in the manufacture of louvers now?

A Not at the present time, no.

Q Are you selling them for Atherton?

A Well, we have, yes.

MR. FRANKLIN: I think that will be all.

MR. FOUTS: No further.

THE COURT: Call your next, if any.

(Testimony of Alan Franklin.)

MR. FOUTS: The defendant rests at this point, your Honor.

THE COURT: Anything further for the plaintiff?

MR. FRANKLIN: Yes, sir. There is certain information I have myself and no other witness has it, and I am afraid I will have to take the stand myself, your Honor, which I don't like to do very well, but there is no way out of it.

THE COURT: Swear him.

DEFENDANT RESTS.

ALAN FRANKLIN,

called as a witness in behalf of the Plaintiff in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION

THE COURT: To make the record, you had better ask yourself questions and answer them, so that they can be objected to.

Q BY MR. FRANKLIN: What is your name?

A Alan Franklin.

Q What is your occupation?

A Attorney at law. Attorney for the plaintiff in this action.

MR. FOUTS: I didn't catch that. Will you speak a little louder, if you please? What was that last?

A Attorney for plaintiff in this action.

MR. FOUTS: Oh, yes.

Q BY MR. FRANKLIN: Have you made any investigation as to the installation of the Atherton register at the residence of Mr. Emil Bossard, No. 13,015 Chandler Boulevard, Van Nuys, California?

(Testimony of Alan Franklin.)

A I have.

Q State the nature of the investigation.

A I first called at Mr. Bossard's residence some two or three months ago, at Van Nuys, and inspected the register which was installed there, which he stated was manufactured by Mr. Atherton. I got a description of the property from the Engineering Department of the City of Los Angeles, which I have here, as Lot 119, Tract 1000, Maps, Book 19, pages 1 to 34, Emil R. Bossard, 13,015 Chandler Boulevard, Van Nuys, California. I called at the Department of Buildings of the County of Los Angeles with this memorandum, with this description of the property, and the name of Mr. Bossard and the address, which corresponds to the address set up in the bill of particulars, stating that this device was now in use at Mr. Bossard's home in Van Nuys, and I asked for the building records of Mr. Bossard's residence, and I was given this record which I have in my hand now, and was informed by the Building Department that the address 13,015 Chandler Boulevard, Van Nuys, California, in 1925 had the number of 13,015 East Sherman Way. And the record of the Building Department, the only record that I could get of that building was a record of a permit for the purpose of building one room with a cellar 10 by 16. This permit was issued May 14, 1925.

MR. FRANKLIN: I wish to offer this memorandum in evidence that I gave to the Building Department.

MR. FOUTS: That is objected to as entirely incompetent, irrelevant, and immaterial.

MR. FRANKLIN: Well, I will show the connection.

(Testimony of Alan Franklin.)

THE COURT: Well, what is it—a memorandum made by you?

A That is a memorandum that I stated I gave to the Building Department, to produce a record of Mr. Bossard's residence, for the purpose of finding—

THE COURT: But it is not the public record?

A That is not the public record, but that is the record—I have another record which corresponds to the description of the property in Mr. Bossard's name.

THE COURT: The point is, I see no evidentiary value in this memorandum any stronger than in your testimony.

MR. FRANKLIN: That memorandum corresponds to the address given here.

THE COURT: Yes, I know; you so testified, and that is unquestioned. But this not being a public record, I don't know that it adds anything to what you have said.

MR. FRANKLIN: Very well.

THE COURT: Objection sustained.

MR. FRANKLIN: All right.

A Now, I copied the description of the property in the deed which Mr. Bossard had when he testified, and the description of the property in that deed corresponds to the description of the property which I had on that memorandum and gave to the Building Department. Now, this address which the Building Department gave me as the address on this permit corresponds to the same address set up in the bill of particulars, but Mr. Bossard had given a different address of his present house, stating that it had this number some time back of 1927, so that there

(Testimony of Alan Franklin.)

is considerable confusion as to the location of Mr. Bossard's property.

THE COURT: Are you testifying now, or arguing? Let's have your testimony. Does that complete your testimony.

MR. FRANKLIN: I will testify that—

THE COURT: You are subject to cross-examination.

A I will testify that the record, from the information that I have in this bill of particulars, with this address I got a record from the Building Department which is inconsistent with the testimony that Mr. Bossard has given as to the identity of his—

THE COURT: Well, that is argument. You have completed your testimony?

MR. FRANKLIN: Well, I will say that the numbers are different.

THE COURT: That is a conclusion. A witness testifies to facts.

MR. FRANKLIN: Well—

THE COURT: Don't confuse your character as attorney with your character as a witness.

MR. FRANKLIN: Well, I have a witness to—

THE COURT: If that is your testimony and that completes your testimony, you are subject to cross-examination. If there isn't any, then you can call attention to what the testimony shows.

MR. FRANKLIN: Very well. Then the address set up in the bill of particulars is 13,015 Chandler Boulevard, Van Nuys. The Building Department with that address gave me a permit which gives the number to the house as

(Testimony of Alan Franklin.)

13,015 East Sherman Way, at the time of May 14, 1925.
Any cross-examination?

CROSS EXAMINATION

BY MR. FOUTS:

Q You called at the home of Mr. Bossard, whatever his number is, did you not?

A Yes, sir.

Q And you saw there the registers which he had in his home?

A That is correct.

Q You didn't have any trouble finding the house, did you?

A Not at all.

Q And nobody hesitated in showing you the registers after you got there? You saw them, didn't you?

A I saw them, yes.

Q Now I don't know that you have put that permit, or whatever it is that you have in your hand, in evidence, or offered it even for identification. I would like to see that, if you are relying upon it in any way.

MR. FRANKLIN: Yes; I will offer it for identification.

THE COURT: It may be marked for identification.
(Plaintiff's Exhibit 9 for Identification.)

Q BY MR. FOUTS: Now, what is the date of this?

A A permit issued, I think, May 24, 1925, on the first page there.

Q Where do you see it?

A Right here (indicating).

Q Yes, May 14, 1925.

A Yes.

(Testimony of Alan Franklin.)

Q Now, this says up here in the line which follows the figure "3", that is, the third line of a series which are numbered, "Owner's name, George F. Martin." Now, do you know anything about who Mr. Martin is?

A I understand that Mr. Martin was the contractor, and he put his name down, got out the permit and put his name down there.

Q As owner of the building?

A That is my understanding of it.

MR. FOUTS: Well, now, if your Honor please, we object to this as immaterial, irrelevant, and incompetent, and further—

THE COURT: Well, it is just offered for identification.

MR. FOUTS: Then I will wait for my objection until it is put in as evidence in the case.

MR. FRANKLIN: I would like to call attention to one statement on that permit that states what the permit is for. "State on following lines exactly what alterations, additions, etc., will be made in this building. One room with cellar 10 by 16."

Q BY MR. FOUTS: And the house which was to be so altered with a cellar put in and a room added to it is 13015 East Sherman Way?

A East Sherman Way, yes, sir.

Q And Mr. Bossard testified, did he not, that he never heard of any such number as that?

A He testified he never heard about it.

MR. FOUTS: Well, I don't know anything about it. The reason I object to it, it is so indefinite that nobody knows anything about it.

(Testimony of S. S. Crisman.)

THE COURT: Does that complete your cross-examination?

MR. FOUTS: Yes.

THE COURT: Anything further by the plaintiff?

MR. FRANKLIN: Yes, your Honor.

S. S. CRISMAN,

called as a witness on behalf of Plaintiff in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FRANKLIN:

Q What is your name?

A S. S. Crisman.

Q What is your occupation?

A Chief Clerk, Building Department, City of Los Angeles.

Q Do you have anything to do with the issuing of permits for building construction, etc.?

A I have charge of the clerical records of the office and overseeing the issuing of permits.

Q Did you issue a permit for the construction of one room with a cellar 10 by 16, May 14, 1925, at the address of 13,015 East Sherman Way?

A Yes, sir.

Q Have you that permit with you?

A Yes, sir.

Q That is the original permit?

A It is the original application on which the permit was issued.

(Testimony of S. S. Crisman.)

MR. FRANKLIN: Your Honor, this is an original document. We made a copy of this, and the copy has everything in it that is written in the application. There is some printed matter on the back there. I would like to offer this copy in evidence.

MR. FOUTS: I think if you will let me see it—

MR. FRANKLIN: Just compare it. Everything is the same with the exception of some printed matter on the back.

MR. FOUTS: And where they have rubber stamps you have written in here some place?

MR. FRANKLIN: I will show you the distinctions.

MR. FOUTS: You don't want to put the original in?

MR. FRANKLIN: Well, this is the original record of the County of Los Angeles.

MR. FOUTS: And you don't want them to get out of your charge? I will not object.

MR. FRANKLIN: I will show you this. There are some remarks on the back here that are not in here.

MR. FOUTS: I will not object to it on the ground that it is a copy.

MR. FRANKLIN: I will just offer this in evidence. It is a copy.

THE CLERK: Is this the same as the one marked for identification?

MR. FRANKLIN: Yes, the same as the one for identification.

MR. FOUTS: But I do object to the receipt of the document as an exhibit in the case, on the ground that it is wholly irrelevant, and there is nothing that connects it with the particular property that we are inquiring about.

(Testimony of S. S. Crisman.)

I don't find the name of Mr. Bossard on there. I don't find this address of his on Chandler Avenue. It is a job that we don't know anything at all about. He never said that he put a room on his house when he dug a cellar, and we don't know anything about it. It seems that it relates to something else, on some other street, and was dug out in the interest of somebody else, and we don't know anything about it, so we object to it on the ground that it is immaterial, and irrelevant, and incompetent to prove anything that is involved in this case.

MR. FRANKLIN: I would like to ask just one more question.

MR. FOUTS: Well, I would like to have a ruling.

THE COURT: I take it you want to ask some more questions to show the materiality?

MR. FRANKLIN: To show materiality; and then I have an argument to make.

Q This East Sherman Way, was that changed to any other street?

A I couldn't tell you as to the particular location. I know all those streets out in the valley there have been changed, in quite a number of instances.

Q Do you know what Chandler Boulevard is now?

A I couldn't answer definitely to that location.

MR. FRANKLIN: Well, I think that will be all, if you want to cross-examine.

MR. FOUTS: It depends on whether the Court is going to admit the exhibit whether I ask any questions.

MR. FRANKLIN: Mr. Bossard has testified that East Sherman Way was changed to Chandler Boulevard, and this number 13015 East Sherman Way corresponds to

(Testimony of S. S. Crisman.)

the same number in the bill of particulars here as Mr. Bossard's residence.

MR. FOUTS: That is, the figures do, but the streets are different.

MR. FRANKLIN: The streets differ.

MR. FOUTS: Yes. One is on Sherman Way and the other is on Chandler Boulevard.

MR. FRANKLIN: The number of east Sherman Way, which is now Chandler Boulevard—

THE COURT: I don't recall any evidence that Chandler Boulevard is Sherman Way.

MR. FRANKLIN: Mr. Bossard testified to that fact.

THE COURT: I don't recall that.

MR. FRANKLIN: And I testified to that fact, that I asked for the address on Chandler Boulevard and they gave me this same address on Sherman Way, and told me that it had been changed. I think if you will read my testimony over there—

THE COURT: Well, I see that is your testimony, but when was it changed?

MR. FRANKLIN: In 1927. Now, this is the point, your Honor. This permit corresponds to the—the number is the same and the street is the same street, only it had a different name. Now, this permit with this address on it says that a cellar was built at that address, which would correspond to Mr. Bossard's residence, which was issued May 14, 1925. Now the testimony has been introduced that the furnace was put in the cellar, so if the cellar was put in there in 1925, why, those registers could not have been put in the house in 1923. So that is the point of this permit.

(Testimony of S. S. Crisman.)

MR. FOUTS: It would be all very well if the document itself supported what counsel has just said. Now, Mr. Bossard has testified that he did get permits for some work that he intended to do on this place, and while he may not have testified as to just when he did it, at the same time he did get some permits when he wanted to put in a water heater, and when it was necessary for him to get a permit because of changing of electric circuits and so on. Now, I don't know anything about this. In the first place, nobody, not even you, Mr. Franklin, has testified that even if East Sherman Way was changed to Chandler Boulevard, that after that change the street numbers remained the same, and there is no evidence whatever that 13.015 East Sherman Way, even after that change to Chandler Boulevard had been made, would be 13015 Chandler Boulevard. I don't know anything about it. There is not a word of testimony to help us out on the thing.

MR. FRANKLIN: I maintain that that record is as good evidence as Mr. Bossard's testimony. And I wish to introduce that record. I think I have as much right to introduce that record which is a public record, as to introduce Mr. Bossard's testimony that he put that in there in 1923.

MR. FOUTS: Mr. Bossard was testifying to some things there he knew something about. Nobody knows anything about this document.

THE COURT: The objection will be sustained. There is a failure to connect the two. The time relation is wholly different. There is nothing here to show any relation

(Testimony of S. S. Crisman.)

between this permit and what Mr. Bossard testified that he did in 1923.

MR. FRANKLIN: Note an exception. Well, but this permit corresponds—the evidence in the bill of particulars I have got here—

THE COURT: I can't help the bill of particulars. We are speaking here—

MR. FRANKLIN: I went to the Building Department and I got this record, which corresponds to this address in the bill of particulars, and which is inconsistent with the testimony that Mr. Bossard has given.

THE COURT: I see no inconsistency between putting a cellar under a house in 1923 and at the same number in 1925 or 1927, whichever your date shows, adding a room and putting a cellar under it, do you?

MR. FRANKLIN: Well, of course, there would have to be a cellar for a furnace.

THE COURT: Yes; but digging another cellar and adding a room doesn't indicate that there wasn't already a cellar and a furnace, does it? I can't see the connection at all.

MR. FRANKLIN: Well, he testified that the furnace was in the cellar.

THE COURT: Yes. And you have nothing to show that it wasn't there in 1923, or that a furnace went into this thing described in this document, do you?

MR. FRANKLIN: Well, there could hardly be more than one cellar.

THE COURT: I happen to own three different pieces of property in San Diego, two of which I sold, and the people have added additional houses on the end of the lot

(Testimony of W. G. Chester.)

and installed equipment separate. It isn't even a circumstance, as I can see, to contradict the testimony that in 1923 a certain thing was done at a property at a certain number, because you show that in 1925 something else was done there.

MR. FRANKLIN: Then I think I had better go on the stand and testify that there was only one cellar there.

THE COURT: Even that wouldn't admit it.

MR. FRANKLIN: Very well. Well, that will be all. Do you want to examine him?

MR. FOUTS: No, I don't think I have any cross-examination of this witness.

THE COURT: Very well.

MR. FOUTS: I understand that that exhibit was not admitted?

THE COURT: No.

MR. FOUTS: Then I haven't any cross-examination.

W. G. CHESTER,

called as a witness on behalf of the Plaintiff in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FRANKLIN:

Q What is your name?

A W. G. Chester.

Q Where do you reside?

A 55 North Hudson, Pasadena.

Q What is your occupation?

A Tool and die maker.

Q What was your occupation in 1923?

(Testimony of W. G. Chester.)

A I was in business, in the manufacturing of electric valves.

Q Where?

A At 1174, I think 1174, East Colorado.

Q Pasadena?

A Yes.

Q Were you in partnership at that time with Mr. Charles Atherton, the defendant in this case?

A Yes, sir.

Q When did that partnership begin?

A It begun about the 1st of January, 1923. I had connections with him before that. I made a few valves while I owned the shop myself.

MR. FOUTS: If your Honor please, I object to this testimony, on this ground: This matter of Mr. Atherton's partnership with this witness was brought out on cross-examination of Mr. Atherton. I never heard of this witness before, when we were taking his direct examination, and I never heard of him, but Mr. Franklin asked Mr. Atherton if in that year he was not a partner of this witness on the stand.

THE COURT: The objection is overruled at this time. I can't tell what this witness might testify to.

MR. FRANKLIN: That is it. You will be surprised when you hear it.

THE COURT: There is nothing now before the Court. There isn't anything shown preliminarily.

MR. FOUTS: All right.

Q BY MR. FRANKLIN: Well, do you know whether Mr. Atherton at the same time was engaged in any other business by himself?

(Testimony of W. G. Chester.)

A He had a sheet-metal shop.

Q Was that near your partnership business?

A 1164 East Colorado.

Q Did you have occasion to visit Mr. Atherton's sheet-metal shop?

A I did.

Q In 1923?

A I did.

Q Do you know what machinery he had in his shop at that time?

A He had the ordinary sheet-metal working machinery.

Q Did he have a punch press?

A He did not.

Q Did he have any machinery that he could have produced this louver which he said he produced by machinery?

A He did not.

Q Do you know whether Mr. Atherton was in partnership with Mr. Lindsay in 1923?

A He might have been, the latter part of 1923, but he wasn't in the forepart of 1923.

Q When did you discontinue your partnership with Mr. Atherton?

A April 1, 1924.

Q Do you know Mr. Atherton's general reputation in the community in which he lives for truth, honesty and integrity?

A Very bad.

THE COURT: The question is, do you know his general reputation.

MR. FRANLIN: Do you know it?

A Yes, I do.

(Testimony of W. G. Chester.)

Q Is it good or bad?

A It is bad.

MR. FRANKLIN: That is all.

THE COURT: Any cross-examination?

MR. FOUTS: Yes.

CROSS EXAMINATION

BY MR. FOUTS:

Q You say Mr. Atherton didn't have any press in his shop, sheet-metal shop?

A I say he did not.

Q In 1923, upon which he might or could have made this brass louver?

A I say he did not.

Q Now, are you talking about hand presses now or machine-operated presses, or are you talking about any kind of presses?

A I am talking about two-ton presses, which he stated.

Q Did he state that he made that little copper device there on a two-ton press?

A He did, yes, sir.

Q And you say he didn't have any two-ton press?

A I say he didn't.

Q What is your attitude toward Mr. Atherton? Are you friendly?

A Not very friendly.

Q Not very friendly?

A No.

Q You would be pretty much delighted to see him lose this case, wouldn't you?

A Well, I don't care if he does.

Q Did not Mr. Atherton have a Niagara No. 15 press in his shop to punch out holes in furnaces, in 1923?

(Testimony of W. G. Chester.)

A He had that in my shop.

Q Did not Mr. Atherton take it from Mr. Atherton's shop to your shop?

A Not in the spring of 1923.

Q When did he do it?

A Later, in the fall of 1923.

Q Now, how do you fix any such date as that?

A Because I can remember it. I have had enough transactions with him to remember it.

Q That is the only way? You don't have a single document, do you?

A Yes, I do.

Q Well, produce them.

A Well, I can produce them, because I know what time I went into business with him.

Q When did you go into business with him?

A I went into business with him along the first part of January.

Q What year are you talking about?

A 1923.

Q And you remained a partner of his until when?

A Until April, 1924.

Q And you were in one shop, running one end of the business, and he was in another shop?

A We were back and forth.

Q Naturally Mr. Atherton would be much more familiar with what was in his own shop than you would be?

A I was in there right along and interested in that line, and I know we had a punch press and used it in our manufacturing business, and we did not have only a little

(Testimony of W. G. Chester.)

punch press there, with a 3-inch belt, with a $\frac{3}{4}$ stem on it. I am a tool and die maker, and I know.

Q That was sufficiently strong to make up a thing like this?

A No, it wasn't large enough. The platen isn't large enough, and he didn't use it.

Q You know all about that, do you?

A I do, because I was in the shop all the time.

Q You say that Mr. Atherton's reputation for truth and honesty and veracity and all that is not very good?

A Yes, sir, I do.

Q Nobody has been so unkind as to say that about any of the witnesses on the other side. You must have some reason for saying that.

A I do; I do.

MR. FOUTS: Well, if we are going to go into that, we probably will have to produce some witnesses on the other side, and I think we will ask no further questions about that.

THE WITNESS: Ask me the question and I will tell you why.

MR. FOUTS: It is enough, I think, to show your animosity toward him, and we will drop it right here.

THE WITNESS: Go on and ask me any question you want to.

THE COURT: Never mind your comments.

MR. FOUTS: We will let the Court decide.

THE COURT: Are you through?

MR. FOUTS: Yes, sir.

(Testimony of W. G. Chester.)

THE COURT: I didn't get your statement as to the machine that was moved later in the fall from Mr. Atherton's shop to your shop.

A Yes; he had a big lever press in there, just a lever press.

THE COURT: It was mentioned by name. What was the name?

A Well, he called it a Niagara.

THE COURT: You say it was moved from his shop into yours?

A It was, in the fall of the year, before we dissolved partnership.

THE COURT: Where was it in April, 1923?

A It was in my place.

THE COURT: I understood you to say he moved it from his place to your place in the fall.

A In the latter part of 1923.

THE COURT: Then where was it in the early part of 1923?

A It was in my place in April, 1923.

THE COURT: When did he move it to your place?

A He moved it soon after we went into partnership.

THE COURT: That is just exactly what I am trying to get straightened out. I understood you to say he moved it into your place in the fall of 1923.

A No; he moved it out of my place.

THE COURT: I got it that he moved it in.

A Out.

THE COURT: All right.

Q BY MR. FOUTS: Out of his place into yours?

(Testimony of W. G. Chester.)

A I suppose so. I don't know. I know the press stood right by the door and I stumbled over it all the time. He used it for his own use and punched out parts of the furnaces.

Q That may be true, but that doesn't fix any date.

A I know it was there.

THE COURT: Well, he testified. Arguing with him won't do any good.

MR. FOUTS: That is true.

MR. FRANKLIN: You asked him if he had any reasons for stating that Mr. Atherton's reputation was good or bad.

MR. FOUTS: Your Honor, I think we ought not to go into that. This case doesn't depend on the reputation of Mr. Atherton. We have half a dozen witnesses here who could fully substantiate him.

THE COURT: There is no need of argument.

MR. FRANKLIN: He asked if he had any reasons, and I would like to ask him.

THE COURT: No, you can't. He didn't develop them. The question of character testimony is limited to the precise questions on direct examination, and on cross-examination matters may be developed on which you might examine on redirect. But the reasons were not given on cross-examination.

MR. FRANKLIN: Q You stated that Mr. Atherton had some sort of a machine at his shop, and Mr. Atherton maintained that it was such a machine that he could have built that device on it. Am I correct in that?

A Well, he said so.

Q He said so?

(Testimony of W. D. Ralphs.)

A Yes.

Q I will ask you, did you ever see Mr. Atherton work on that device or any device like it in 1923?

A He never did.

MR. FRANKLIN: That is all.

THE COURT: That is all.

MR. FRANKLIN: Call Mr. Ralphs.

W. D. RALPHS,

called as a witness on behalf of the plaintiff in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FRANKLIN:

Q What is your name?

A W. D. Ralphs.

Q What is your occupation?

A Electrical contractor.

Q Where do you reside?

A 85 Monte Vista Avenue, Pasadena.

Q Do you know Mr. Charles Atherton, the defendant in this case?

A I do.

Q Do you know what he was doing in the year 1923?

A He was running a sheet-metal shop on Colorado Street.

Q Do you know of any particular articles that he manufactured at that time?

A No, I do not.

Q Do you know whether he made a louver or was making louvers in that shop in the year 1923?

A I do not.

(Testimony of Harold G. Wysong.)

Q Did you go into his shop at that time and examine the articles that he was manufacturing?

A No, I don't think I was in the shop. I might have been in there once or twice, but we had a little trouble over a bill, so I didn't go in there.

Q Do you know Mr. Atherton's reputation in the community in which he lives for truth, honesty and integrity?

THE COURT: General reputation.

MR. FRANKLIN: General reputation.

THE COURT: In the community in which he resides. The question is, Do you or do you not know his general reputation?

A I do not.

MR. FRANKLIN: That will be all.

MR. FOUTS: No cross-examination.

MR. FRANKLIN: Mr. Wysong.

HAROLD G. WYSONG,

called as a witness on behalf of the Plaintiff in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FRANKLIN:

Q What is your name?

A Harold G. Wysong.

Q What is your occupation?

A Machinist.

Q Do you know Mr. Atherton, the defendant in this case?

A Yes, sir.

Q Did you know him in the year 1923?

A Yes, sir.

(Testimony of Harold G. Wy song.)

Q Are you related to Mr. Atherton?

A Yes, sir.

Q What is the relationship?

A He is my father-in-law, or I am his son-in-law.

Q Did you have any business dealings with Mr. Atherton in the year 1923?

A No, sir.

Q Were you not employed by him in 1923?

A I was employed, yes, sir.

Q In what capacity?

A I worked for him, doing outside installations, and also worked for Mr. Chester in 1923.

Q Were you in and out of Mr. Atherton's shop in 1923?

A Yes, sir.

Q Did you work on the sheet-metal work for him at that time?

A No, sir.

Q Did you have occasion to examine the articles that were produced by him at that time?

A Furnaces?

Q Well, whatever they were.

A I examined furnaces, yes, sir.

Q Do you know at that time whether Mr. Atherton was working on a louver such as he has introduced in evidence here as Exhibit No. A?

A What was the question?

Q Did you see Mr. Atherton produce that register or anything like it in the year 1923, in his shop in Pasadena?

A I didn't, no, sir.

(Testimony of Harold G. Wysong.)

Q And you had occasion to see pretty much what all was going on in the shop at that time, as I understand?

MR. FOUTS: I object to that as leading.

A I saw part of the shop. Maybe I didn't see all of it.

Q Were you in the shop very often?

A Every day.

Q Every day?

A Yes.

Q If Mr. Atherton had been working on a device of that kind would you have been likely to have seen it?

A I don't know.

Q You don't know?

A No.

Q He might have done it secretly without you knowing it?

A Probably so.

Q Did Mr. Atherton have any machinery in his shop at that time that he could have produced that device by—stamps or punch presses, or whatever would be necessary?

A I am not very well acquainted with sheet-metal machinery. I don't know. He might have had. It depends on his trade.

Q You don't know, as a matter of fact, that he did have, do you?

A No, I don't.

Q Do you know Mr. Bossard?

A I am acquainted with him, yes, sir.

Q Did you have anything to do with the installation—

A No, sir.

Q —of the register in his house?

A No, sir.

(Testimony of Harold G. Wysong.)

Q Did you install a furnace in his house in 1927?

A No, sir.

Q Did you install any furnace there at all?

A No, sir.

Q Did you do any wiring over there at that time?

A I wired a house for Mr. Bossard in 1927, I think it was. That was a new house he built.

Q Do you know anything about Mr. Atherton's business or manufacturing louvers—what is the earliest date that you know when he engaged in the manufacture of these louvers?

A The first I ever saw of these louvers being manufactured by him was in 1926.

Q Where did you see that?

A In the shop—the factory of the Remote Control Valve & Manufacturing Company.

Q Were you with Mr. Atherton from 1923 on to 1926?

A I was around him.

Q You were around him, and were you closely associated with him?

A Yes, sir.

MR. FRANKLIN: I think that is all.

THE COURT: Any cross-examination?

CROSS EXAMINATION

BY MR. FOUTS:

Q During this time that you say you worked for Mr. Atherton, your work was outside installations, as I understand you to say?

A Yes, sir.

(Testimony of Harold G. Wysong.)

Q What was your age back in 1923, that is, five years—yes, six years ago? How old are you now?

A 26.

Q So you would have been about 20, back at this time in 1923?

A Yes, sir.

Q And you were a boy that was helping Mr. Atherton by doing his outside work?

A I was doing the outside work, that is true.

Q And you would come into the shop now and then, I suppose?

A Every day, yes, sir.

Q You weren't particularly interested in what was going on in the shop, as I take it?

A Not so much, no, sir.

Q And Mr. Atherton might have done many and many a thing without your knowing anything about it?

A Absolutely.

Q He might have made quite a good many of these louvers like this Exhibit A here, that brass one, you remember, without your knowing anything about it; isn't that true?

A He could have done it, sure enough.

Q So the mere fact that you didn't know that he was making louvers of that kind until 1926 doesn't mean that he might not have made some before that time, does it?

A I can't say that it would.

THE COURT: That is argumentative, anyway, isn't it?

MR. FOUTS: I think it probably is so, yes. I don't think I have any more questions.

(Testimony of Wayne Summerville.)

THE COURT: That is all. Is there anything further?

WAYNE SUMMERVILLE,

called as a witness on behalf of the Plaintiff in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FRANKLIN:

Q What is your name?

A Wayne Summerville.

Q What is your occupation?

A Mechanic.

Q Do you know Mr. Charles Atherton, the defendant in this case?

A I do.

Q How long have you known him?

A Since 1926, about December.

Q Since 1926?

A Yes.

Q You did not know him in 1923?

A I did not.

Q Did you have any business dealings with him in the manufacture of louvers?

A Dies; he had some dies made in our plant. They were sold to him by our company.

Q Dies for louvers?

A Yes, sir.

Q In 1926?

A It might possibly have been in 1927. I wouldn't say.

(Testimony of Wayne Summerville.)

Q Did you say in 1926 or 1927?

A I am not positive the date the dies were made. They were sold to him February 1, 1927.

MR. FOUTS: If your Honor please, either date is so late that it is entirely immaterial in this controversy.

THE COURT: Yes. What are you trying to show by this witness?

MR. FRANKLIN: Well, that Mr. Atherton did not engage in the manufacture of louvers until later than 1923. We have had one witness, his son-in-law, who testified that the first time he saw them was in 1926.

THE COURT: Well, of course, all that wouldn't negative his own testimony that he made a few in 1923 and 1924.

MR. FOUTS: This witness has said that he didn't know Atherton until 1926, so how is that going to establish the fact that Atherton didn't do something back in 1923 or '24 or '25, when the witness didn't know him?

Q BY MR. FRANKLIN: Do you know Mr. Atherton's general reputation in the community in which he lives for truth, honesty and integrity?

THE COURT: The question is yes or no. Do you know his reputation?

Q BY MR. FRANKLIN: Do you know his reputation?

THE COURT: His general reputation for truth,—what else did you say?

MR. FRANKLIN: Honesty and integrity.

THE COURT: For truth, honesty and integrity, in the community in which he lives.

A No, I don't, not in the neighborhood.

(Testimony of Wayne Summerville.)

THE COURT: Not in the neighborhood.

MR. FRANKLIN: In the community in which he lives, in the city of Los Angeles.

A And Pasadena?

Q And Pasadena.

A It is good, as far as I know.

MR. FOUTS: What was that answer?

A Good, as far as I know.

MR. FOUTS: Well, then, we don't have—

THE COURT: Then you are not objecting?

MR. FOUTS: No, I am not objecting and I am not cross-examining either.

THE COURT: All right, that is all. Have you further testimony?

MR. FRANKLIN: I don't know.

THE COURT: I was about to say that I would have to suspend right soon, because of some other matters coming into my chambers. If we could in a few minutes complete the testimony, I would try and do it; but unless we can, can't we come back in the morning and finish this up?

MR. FRANKLIN: I think I am about through, your Honor. I would like to consult with one witness here.

MR. FOUTS: We shall have no sur-rebuttal, or we won't ask for it unless something develops yet that I don't know about. While they are talking there, I would like to bring up this little matter about how the case is to be submitted to the Court finally.

MR. FRANKLIN: I think we are through, your Honor.

MR. FOUTS: Then we might as well talk about that. I told Mr. Franklin at noon that in view of the financial

(Testimony of Wayne Summerville.)

circumstances of Mr. Atherton and my desire to save him every penny that I could, I would rather argue the case right here at the close of the testimony and have it out of the way, and he was agreeable to that, and I am not very well myself this afternoon.

THE COURT: I prefer very much to have you submit briefs, both as to the facts and the law. You see, in a patent case, those of us who haven't been patent attorneys find that there are certain definite technical things that we have to check, and I would much prefer if you gentlemen would submit it by briefs. You don't have to summarize all the facts, but the essential facts, what the evidence shows, briefly, and what the law applied thereto would mean. You can take your time for that.

MR. FOUTS: You are the plaintiff—you represent the plaintiff. How much time do you want?

MR. FRANKLIN: I would say about 20 days.

MR. FOUTS: And then I may have 15 days following that for mine?

THE COURT: All right; and about 5 days to come back on what your friends may dig up?

MR. FOUTS: 20, 15 and 5?

THE COURT: Yes. And that is a stipulation with me. Don't go to some other Judge and have him sign an order extending the time, because I won't recognize it. This is personal. If for any reason you cannot file your briefs at the time stipulated, come in and tell me about it.

The matter will be submitted on briefs, to be filed as indicated.

TESTIMONY CLOSED.

[Endorsed]: In the District Court of the United States, for the Southern District of California, Central Division. Hon. Edward J. Henning, Judge presiding. Waterloo Register Company, plaintiff -v- Charles Atherton, et al, defendants. No. N-113-H. Equity. Reporter's Transcript of testimony and proceedings on trial. Los Angeles California May 10, 1929 Filed Jun -7 1929 R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk. Reported by Ross Reynolds, C. W. McClain. Reynolds & McClain, Shorthand Reporters and Notaries, Official Reporters U. S. District Court Suite 914-917 Law Building, Los Angeles, Calif. Mutual 2708

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WATERLOO REGISTER)	
COMPANY,)	
Plaintiff,)	
)	
vs.)	IN EQUITY
)	NO. N-113-H.
CHARLES ATHERTON,)	
et al.,)	
Defendants.)	

ORDER OF COURT

Sufficient cause thereunto appearing, it is hereby ORDERED

That the transcript of the testimony in the above entitled cause and appearing on page 100, be corrected by the insertion in line 16 thereof, after "MR. FRANKLIN:"

and before "Well", the following word—EXCEPTION;—.

Edward J. Henning

UNITED STATES DISTRICT JUDGE.

Los Angeles, California,

May 15, 1929.

[Endorsed]: In Equity No N-113-H United States District Court Southern District of California Central Division Waterloo Register Company, Plaintiff, vs. Charles Atherton et al., Defendants. Order of Court Filed May 15 1929 R. S. Zimmerman, Clerk, By M. L. Gaines Deputy Clerk Alan Franklin 309 Cotton Exchange Bldg., Los Angeles, California Attorney for Plaintiff.

DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WATERLOO REGISTER CO.,	}	IN EQUITY
PLAINTIFF		
vs.		
CHARLES ATHERTON, et al,	}	NO. N-113-H.
DEFENDANTS.		

STIPULATION

It is hereby stipulated that the complete Reporter's Transcript of Testimony and Proceedings on Trial be printed for purposes of appeal, the complete transcript

being deemed essential for a proper hearing and determination of this cause on appeal.

Alan Franklin

Attorney for Plaintiff.

Samuel E. Fouts

Attorney for Defendant.

Los Angeles, California,

October 30th, 1929.

It is so ordered.

Edward J. Henning

Judge.

[Endorsed]: In Equity No. N-113-H United States District Court Southern District of California Central Division Waterloo Register Company, a corporation, Plaintiff, vs. Charles Atherton, et al, Defendants. Stipulation. Received copy of the within this 30th day of October, 1929 Samuel E. Fouts Attorney for Defendant Chas. Atherton. Filed Oct. 30 1929 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk Alan Franklin 639 Cotton Exchange Bldg., 106 West Third Street, Los Angeles, California, Attorney for Plaintiff

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, CENTRAL DIVISION

WATERLOO REGISTER)	
COMPANY, a corpora-)	
tion)	
Plaintiff,)	
)	
vs.)	NO. N-113-H
)	EQUITY.
Charles Atherton, et al.,)	
)	
Defendants)	

PETITION FOR APPEAL

To the Honorable the Judges of the District Court of the
United States for the Southern District of California,
Central Division.

Petitioner Waterloo Register Company, a corporation, feeling aggrieved by the judgment and decree of said Court entered in the above-entitled cause on the 5th day of September 1929, in favor of the Defendant, Charles Atherton, to the effect that said Defendant has not infringed the claims of the patent in suit and for the reason that the registers made by said defendant were in public use for more than two years prior to the filing of the application for the patent in suit, hereby appeals from said judgment and decree to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, for the reasons set forth in the Assignment of Errors filed herewith, and prays that its appeal may be allowed and citation issued, as provided by law, and that a transcript of the record, proceedings documents and exhibits upon which said judgment and decree was based, duly authenticated as

provided by law, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit sitting at San Francisco, State of California.

And Petitioner further prays that the proper Order relating to the security to be required of it be made.

Waterloo Register Company

by Alan Franklin

Its Attorney.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

WATERLOO REGISTER)
COMPANY, a corpora-)
tion)

Plaintiff,)

vs.)

CHARLES ATHERTON,)
et al.,)
Defendants)

NO. N-113-H
EQUITY.

ASSIGNMENT OF ERRORS

Comes now the appellant, Waterloo Register Company, a corporation, and specifies and assigns the following as errors upon which it will rely on its appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit from the Judgment and Final Decree of this Court entered September 5, 1929.

I

That the District Court of the United States for the Ninth Circuit, Southern District of California, Central

Division, erred in entering any decree in favor of the defendant, Charles Atherton.

II

That said Court erred in entering the decree of September 5th 1929 for the reason that the same is contrary to law.

III

That said Court erred in decreeing as follows:

"1. That the Defendant, Charles Atherton, has not infringed the claims of the patent in suit and for the reason that the registers made by said Defendant were in public use for more than two years prior to the filing of the application for the patent in suit."

IV

That said Court erred in decreeing that the patent in suit is not infringed by the defendant.

V

That said Court erred in decreeing that the patent in suit is not infringed by Exhibit 7.

VI

That said Court erred in not decreeing the patent in suit infringed by the Defendant.

VII

That said Court erred in not decreeing Exhibit 7 an infringement of the patent in suit.

VIII

That said Court erred in decreeing that the plaintiff take nothing by this suit.

IX

That said Court erred in decreeing that the Bill of Complaint be dismissed with costs to Defendant in the sum of \$.....to be taxed according to the rules and practice

of the Court, and that Defendant have execution therefore.

X

That said Court erred in not entering a decree for an injunction, costs, profits, and damages, as prayed in the Bill of Complain, against the Defendant, for infringing the Patent in suit.

WHEREFORE, the appellant Waterloo Register Company, a corporation, prays that the judgment and decree of said District Court of the United States for the Southern District of California, Central Division be reversed and set aside and that said Court be directed to enter a decree adjudging the patent in suit infringed by the Defendant Charles Atherton, and decreeing that Plaintiff otherwise have the relief prayed in the Bill of Complaint.

Alan Franklin

Attorney for Appellant.

Dated at Los Angeles, Calif., this 17th day of September 1929.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, CENTRAL DIVISION

WATERLOO REGISTER)
COMPANY, a corpora-)
tion)
Plaintiff,)
vs.)
CHARLES ATHERTON,)
et al.,)
Defendants)

NO. N-113-H
EQUITY.

ORDER ALLOWING APPEAL

In the above entitled cause, the Petitioner, Waterloo Register Company, a corporation, having filed its petition

for an Order allowing an appeal from the Judgment and Final Decree of this Court made and entered September 5th 1929, together with Assignment of Errors, now upon motion of Alan Franklin, Esquire, solicitor for Petitioner.

IT IS ORDERED that said appeal be and hereby is allowed to Petitioner in the United States Circuit Court of Appeals for the Ninth Judicial Circuit, from the Judgment and Final Decree made and entered by this Court September 5th 1929 as follows:

"1. That the Defendant, Charles Atherton, has not infringed the claims of the patent in suit and for the reason that the registers made by said Defendant were in public use for more than two years prior to the filing of the application for the patent in suit;

2. That Plaintiff take nothing by this suit; and

3. That the Bill of Complaint be, and the same hereby is, dismissed, with costs to Defendant in the sum of \$74.20 to be taxed according to the rules and practice of this Court, and that Defendant have execution therefor."

And that the amount of Petitioner's bond, to act as a supersedeas and stay of costs be, and the same is hereby fixed at the sum of Two Hundred Fifty Dollars (\$250.00).

IT IS FURTHER ORDERED that upon the filing of said security, a certified transcript of the record and proceedings herein be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Judicial Circuit in accordance with the rules in equity by the

Supreme Court of the United States promulgated, and in accordance with the Statutes made and provided together with the exhibits on file in this cause, or duly certified copies thereof.

Edward J. Henning

United States District Judge Southern District of California, Central Division.

Dated at Los Angeles, California, this 17th day of September, 1929.

[Endorsed]: In Equity No N-113-H United States District Court Southern District of California Central Division Waterloo Register Company, a corporation, Plaintiff vs. Charles Atherton, et al., Defendants Petition for Appeal Assignment of Errors Order Allowing Appeal Filed Sep 17 1929 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk Alan Franklin 639 Cotton Exchange Bldg. 106 West Third Street Los Angeles, California Tucker 2760 Attorney for Plaintiff.

DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WATERLOO REGISTER COMPANY
a corporation

	—vs—	Plaintiff,)	In Equity No. N-113-H
CHARLES ATHERTON		Defendant)	

ORDER FOR TRANSMISSION OF ORIGINAL EXHIBITS TO CLERK OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

And, now, to-wit, October, 1929, IT IS HEREBY ORDERED:

That all original Exhibits offered in evidence at the trial of this cause, being plaintiff's physical Exhibits 1 to 9 inclusive, and defendant's Exhibits A to D inclusive, be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, and filed with the Clerk thereof, for use upon the hearing of the appeal herein.

Edward J. Henning

UNITED STATES DISTRICT JUDGE

Los Angeles, California

October 30th, 1929.

[Endorsed]: In Equity No N-113-H United States District Court Southern District of California Central Division Waterloo Register Co. Plaintiff vs. Charles Atherton Defendant. Order for transmission of original exhibits to Clerk of the United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct 30 1929 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk Alan Franklin 639 Cotton Exchange Bldg. Los Angeles, Calif Attorney for Plaintiff.

NORTHWESTERN
CASUALTY AND SURETY COMPANY

Home Office: Brunder Building
MILWAUKEE, WISCONSIN.

Executive Offices
UNION INDEMNITY BUILDING
NEW ORLEANS

(_____)
(	NORTHWESTERN)
(	Casualty and Surety Company)
(	Home Office, Milwaukee, Wis.)
()
(	( Cut of Oak Tree))
()
(	Sturdy as the Oak)
()
(	Executive Offices)
(	NEW ORLEANS)
(_____)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

WATERLOO REGISTER)
COMPANY, a Corpora-)
tion)
Plaintiff)
vs.)
CHARLES ATHERTON,)
et al)
Defendants)

NO. N-113-H
EQUITY

KNOW ALL MEN BY THESE PRESENTS:

THAT, WE, WATERLOO REGISTER COMPANY, a Corporation, as Principal and NORTHWESTERN CASUALTY & SURETY COMPANY, as Surety, are

held and firmly bound unto CHARLES ATHERTON, in the full and just sum of TWO HUNDRED FIFTY (\$250.00) Dollars to be paid to the said Charles Atherton, his certain Attorney, Executors, Administrators or Assigns; to which payment, well and truly to be made, we bind ourselves our heirs, executors, and administrators, jointly and severally by these presents.

SEALED WITH OUR SEALS, this 16th day of October, 1929.

WHEREAS, lately at a District Court of the United States for the Southern District of California, Central Division, in a suit pending in said Court between Waterloo Register Company, a Corporation Plaintiff versus Charles Atherton, et al, Defendants No. N-113-H Equity, a judgment was rendered against the said Waterloo Register Company, a Corporation and the said Waterloo Register Company, a Corporation, having obtained from said Court an order allowing appeal to reverse the judgment in the aforesaid suit, and the citation directed to Charles Atherton and to Samuel E. Fouts his Attorney citing and admonishing them to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit to be holden at the City of San Francisco in the State of California on the 16th day of October, 1929.

Now, the condition of the above obligation is such that if the said Waterloo Register Company, a Corporation shall prosecute said appeal to effect and answer all damages for costs and pay the judgment rendered against it in the said District Court of the United States for the Southern District of California, Central Division, if it fail to make

its plea good, then the above obligation to be void; otherwise to remain in full force and effect.

NORTHWESTERN CASUALTY &
SURETY COMPANY

BY: Channing Follette

Its Attorney-in-Fact. (SEAL)

Approved Oct 16, 1929

Wm. P. James

Dist. Judge.

(_____)
 (NORTHWESTERN)
 (Casualty & Surety Company)
 (Home Office, Milwaukee, Wis.)
 ((Cut of Oak Tree))
 (Sturdy as the Oak.)
 (Executive Offices)
 (NEW ORLEANS)
 (_____)

State of California)
) SS.
 County of Los Angeles)

On this 16th day of October, 1929 before me appeared Channing Follette to me personally known, who being by me duly sworn, did say he is the Agent and Attorney-in-fact of the Northwestern Casualty and Surety Company of Milwaukee, Wis.; that the seal affixed to the foregoing instrument is the corporate seal of the said corporation, and that the said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said Channing Follette acknowledged that he executed said instrument as such Agent and

Attorney-in-fact and as the free act and deed of said corporation.

(SEAL)

Esther McLaughlin

Notary Public Los Angeles County

My commission expires Aug 10, 1932

[Endorsed]: No. N 113 H Bond Costs on Appeal On Behalf Of Waterloo Register Company, a Corporation In Favor Of Charles Atherton, et al Surety Northwestern Casualty and Surety Company Milwaukee, Wisconsin Executive Offices, New Orleans Filed Oct 16 1929 R. S. Zimmerman, Clerk By M L Gaines Deputy Clerk.

PRAECIPE

District Court of the United States
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WATERLOO REGISTER COM- PANY, a corporation, Plaintiff-Appellant	}	CLERK'S OFFICE In Equity No. N-113-H PRAECIPE FOR TRANSCRIPT OF RECORD
—vs— CHARLES ATHERTON Defendant-Appellee		

To the Clerk of Said Court:

SIR:

Please issue, in accordance with and in response to appeal allowed, a certified transcript of record including;

1. Citation on appeal
2. Bill of Complaint
3. Answer
4. Plaintiff's Demand for Bill of Particulars and

Order thereon

5. Defendant's Answer to Plaintiff's Demand for Bill of Particulars
6. Minute Order of Court, dated June 24, 1929
7. Final Decree, dated Sept. 5, 1929
8. Reporter's Transcript
9. Order of Court, inserting exception, filed May 15, 1929.
10. Petition for Appeal
11. Assignment of Errors
12. Order Allowing Appeal
13. Bond on Appeal
14. Order for Transmission of Exhibits
15. Copy of this Praecipe.
16. Stipulation and order to print complete transcript

Alan Franklin
Attorney for Plaintiff-Appellant

Los Angeles, Calif.
October 30, 1929

[Endorsed]: Original In Equity No. N-113-H United States District Court Southern District of California Central Division Waterloo Register Co. Plaintiff Appellant -vs- Charles Atherton Defendant Appellee Praecipe for Transcript of Record Filed Oct 30, 1929 R. S. Zimmerman, Clerk. By Edmund L. Smith Deputy Clerk. Alan Franklin 639 Cotton Exchange Bldg Los Angeles, Calif. Attorney for Plaintiff-Appellant

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WATERLOO REGISTER)	
COMPANY,)	
Plaintiff,)	
)	
vs.)	IN EQUITY
)	NO. N-113-H.
CHARLES ATHERTON,)	
et al.,)	
Defendants.)	

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 141 pages, numbered from 1 to 141 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; bill of complaint; answer; order; demand for bill of complaint; answer to bill of complaint; minute order of June 24, 1929; final decree; reporter's transcript; order of court regarding evidence; stipulation and order settling statement of evidence; petition for appeal; assignment of errors, order allowing appeal; order for transmission of original exhibits; bond on appeal and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ and that said amount has been paid the printer by the appellant

herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of December, in the year of Our Lord One Thousand Nine Hundred and Twenty-nine, and of our Independence the One Hundred and Fifty-fourth.

R. S. ZIMMERMAN,

Clerk of the District Court of the
United States of America, in
and for the Southern District of
California.

By

Deputy.

